United States Court of Appeals for the Second Circuit

APPENDIX

ORIGINAL

77-1216

IN THE

United States Court of Appeals

For The Second Circuit

B p/s

UNITED STATES OF AMERICA,
Appellee,
against

CHAIM KAHAN, SOLOMON WERCBERGER and
MOR WERCBERGER,
Defendants-Appellants.

ON APPEAL FROM JUDGMENTS OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX

VOLUME 2 — 415a to 828a

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[illegible] CIRCUIT

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3500 --

MR. YOUTT: He did not have any in the grand jury?

MR. CORCORAN: He did not.

MR. YOUTT: Again, I'm only requesting that I get some advance on witnesses tomorrow.

THE COURT: That depends on willingness of the District Attorney to turn it over to you. Now, Mr. Corcoran said he's ready to turn it over, you're not entitled to that as a matter of our Court of Appeals, which says in the United States against Percival, that the trial Court cannot direct the United States to turn over material before the witness.has completed his direct testimony, so Mr. Corcoran is giving you more than the Court of Appeals said you are entitled to, and I think it's very helpful.

MR. YOUTT: Thank you.

THE COURT: Suppose you spend a few moments today and get it from him.

MR. YOUTT: Fine. One further thing I would like to put on the record, and I don't anticipate it will take very long but recognizing from this morning, and the issue that we litigated on the motion to suppress, I really didn't get a chance to present my

7 position short of my general outline last night, as to why I was requesting that the Schick cartons, or that the search and seizure be suppressed, and I'm wondering if I can just in two or three sentences present it at this time by the way of a motion, I guess to renew my motion.

THE COURT: Go ahead.

MR. YOUTT: Essentially, your Honor, the evidence that was presented this morning concerns some information which was later acquired concerning some inaccuracies in the affidavit supporting the warrant, specifically the statements in the affidavit to the effect that the informer was in the above-described premises, the CBS Warehouse, on March 12, 1975, and while in the premises he observed several thousand cartons of the Schick blades of certain designation, specification numbers.

I would contend, your Honor, that that is an inaccuracy based upon the information that we learned today, that is material in that it is the actual basis from which it can be concluded that these items were in the CBS Warehouse. I would contend that it is the result not of intentional misconduct on the part of the agent but as a result of negligence in that the agent did not present the information

8 necessary to support a proper warrant, by telling Agent Pecoraro did not tell Agent Colgan in his telephonic communication, that he had confirmed his informer's information by seeing the actual arrival of his informant on the premises of the CBS Warehouse. If that occurred before the phone call, it apparently was not transmitted to Agent Colgan, therefore, it did not get into the warrant based upon the standard culpability of whether it is negligence or reckless-less, I would content that it affected a material statement of the affidavit, and for that reason, the seizure should be suppressed, and, I made my argument.

THE COURT: Yes, instead of 12 in the affidavit it said the 13th, would it have been correct?

MR. YOUTT: Except there was no means of communicating with the informant to see whether he had seen the Schick products in the warehouse on the 13th, because at the time the informant was unloading, Agent Pecoraro was making the telephone call, and as I say, I base my argument on the case of the U.S. versus Gonzalez, 498 Fed. 2nd 834, a decision by the -- excuse me -- 833 --

MR. CORCORAN: Your Honor, based upon the Gonzalez case, I would suggest that the motion be

9 denied, even applying the negligence standard which Gonzalez seems to suggest, might be the standard, although they don't conclude that it is, there would be no reason to suppress here, since the agent didn't just take information, they went to the extent of going out to the premises, making their own observations, which certainly was more than was called for.

THE COURT: Under the pressure of time that Mr. Pecoraro testified to, if we talk about the standard of negligence that usually applies in a negligent act the reasonably prudent FBI agent, and under all of the circumstances, I would make a finding that the agent was not negligent. I don't think that Gonzalez seems to say that performance is required, just that the agent act reasonably under all the circumstances, and I certainly find that both agents did act reasonably, and Agent Colgan misinterpreted the statement that we unloaded and S&F and CBS, and I would think that that's the way I would interpret it, and yes, that is the information he had gotten from Pecoraro in transmitting what Pollari had told him.

MR. YOUTT: That's all I have, your Honor.

THE COURT: All right; 10:00 o'clock tomorrow.

* * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
: 75-CR-762
-against-
:
CHAIM KAHAN, SOLOMON
WERCBERGER, MOR WERCBERGER, :

Defendants. :

-------------------------------x

United States Courthouse
Brooklyn, New York

January 19, 1977
10:00 o'clock A.M.

Before:

HONORABLE JACOB MISHLER, Chief U.S.D.J.

PAUL KLIMASZEWSKI
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: PAUL CORCORAN, ESQ.
Assistant U.S. Attorney

HARRY E. YOUTT, ESQ.
Attorney for Defendants

THE CLERK: Criminal cause on trial, United States versus Chiam Kahan, Solomon Wercberger and Mor Wercberger.

THE COURT: Both sides ready?

MR. YOUTT: Yes, your Honor.

MR. CORCORAN: Yes, your Honor.

THE COURT: Seat the jury.

(The jury was seated.)

THE COURT: Good morning, ladies and gentlemen, we are ready to start on time. Mr. Colgan, would you please resume. Mr. Youtt, cross-examination.

MR. YOUTT: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. YOUTT:

Q Agent Colgan, was it your testimony that Mr. Mor Wercberger and Mr. Chiam Kahan were on the premises at the time you, that you arrived on the premises of the CBS Warehouse on March 13, 1975?

A To the best of my recollection, yes.

Q Did you have a discussion, I take it, on that particular occasion, you spent most of your time in terms of interviewing Mr. Mor Wercberger; is that correct?

A On the 13th of March, 1975?

Q On the 13th?

A That's correct.

Q Did you participate in the interview of Mr. Chiam Kahan on that date?

A Yes, I did.

Q And did you interview -- There came a time when Mr. Chiam Kahan left the room where you were speaking to Mr. Mor Wercberger, and you continued your conversation with him; is that right?

A That's correct.

Q Now, in your discussions with Mr. Mor Wercberge and I take it that you were introduced to Mor or knew him by the name or nickname of Moische; is that correct?

A That's correct.

Q Mor and Moische are one and the same, as far as you know?

A That's how I understand it, yes.

Q So, when you were speaking with Moische on that particular day, did you discuss with him the discrepancy in numbers with respect to the first day's shipment, the first day being March the 12th and the discrepancy, being the discrepancy between the 1,606 which was reported on the internal books and records of the CBS Warehouse and the 1,654, which were reported on the bill of lading?

A I did.

Q Did Mr. Moische Wercberger tell you anything with respect to that d[illegible]ncy?

A Not that I [illegible]. I asked him the question and he did not answer it.

Q Did he say anything about having brought this matter up with the driver of the truck that delivered the goods on the 12th of March?

A No, he did not.

Q When you spoke with Mr. Mor Wercberger on March the 13th, I take it that you had already spoken with Mr. Mor Wercberger on a previous occasion, February the 4th of 1975; is that correct?

A That's correct, sir.

Q At that time, were you accompanied by any other agent?

A I would say yes, but I don't recall who they were.

Q But you, yourself, interviewed Mr. Wercberger on that day?

A That's correct.

Q Now, referring then to February the 5th, 1975, February the 4th, I'm sorry, did you obtain from Mr. Mor Wercberger Government's Exhibit 6?

A Yes, I did.

Q Now, what does Government's Exhibit 6 reflec with respect to the -- To whom the shipment was ultimately consigned?

A According to this document, which I considered a bill of lading, it indicates a shipment of items consigned to a Mr. A. Perez, San Paolo, Brazil.

Q Is there any further address on that particular document, with respect to the ultimate consignee?

A Care of CBS Warehouse, foot of 50th Street, Brooklyn, New York.

THE COURT: Mr. Youtt, I normally do not permit examinations that just require a witness to read a document. Of course, you can read the document or you can circulate it among the jury, if you wish. If it's preliminary to a question concerning what the witness or did, or conversations he had, then it's proper, but the mere reading of a document --

MR. YOUTT: I understand. I have completed that aspect of the questioning and preliminary questionings, and my next question now, which is:

Q Did you discuss with Mr. M½r Wercberger the name, identity and address of the consignee on February 4, 1975?

A I believe I did.

Q What did you say to him and what did he say to you?

A I really don't recall that conversation pertaining to the consignee. I believe the questioning would have been, I would have been more concerned with the question of who delivered it.

Q And you interviewed, I take it, that on February you didn't come with a search warrant; is that correct?

A That's correct, I have testified to that.

Q But, after you interviewed Mr. Wercberger, you left with Government's Exhibit 6 and at some point, you also took into your custody, or the FBI's custody, the shipment of Whitehall products and Anacin; is that correct?

A That's correct, at some later time.

Q And when you came to the warehouse on February the 4th, 1975, I take it that someone at CBS Warehouse was responsible for showing you the shipment or the location of the shipment that you were looking for; is that correct?

A That's correct.

Q Who was that?

A To the best of my recollection, it was Mr.

Colgan-cross

Mor Wercberger.

Q And now directing your attention back to March the 13th, 1975, and referring specifically to Government's Exhibit 13, which I'm handing you, Government's Exhibit 13 is the item which was obtained from the person of Mr. Mor Wercberger; is that correct?

A I'll have to answer that by saying that I was informed that this document was. I, myself, did not obtain the document from the person of Mr. Mor Wercberger.

Q At the time that you interviewed Mr. Mor Wercberger, did you have that particular document before you?

A At the time of interview, no.

Q That is something that was acquired after the interview; is that correct?

A It was acquired after the arrest.

Q Now, during your interview of Mr. Mor Wercberger, did you discuss with him the process of preparing internal records by CBS Warehouse upon receipt of a shipment?

A Yes, I did.

Q And did you discuss with him, generally, that process in addition to specifically with reference to the goods at issue in this case; is that correct?

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Colgan-cross

A That's correct.

Q Did you have any discussion with Mr. Mor Wercberger about reasons why such internal procedures had not taken place with respect to the shipment received on March 13th?

A Yes, I did.

Q What was said by you and what was said by him?

A I cannot give you the exact substance of my question, but the answer was that he had not had enough time to prepare these internal documents pertaining to the shipment delivered on the 13th of March, 1975.

Q And, as a matter of fact, it had only been approximately half an hour between the end of the receipt of the shipment and your arrival at the premises; is that correct?

A Approximately, yes.

Q Now, you testified yesterday as to what is your understanding of a bill of lading, what function a bill of lading serves; did you not?

A I believe I gave a rough definition of the purposes of the bill of lading, yes.

Q And what was the definition, again, just for purposes of reacquainting the jury with the concept?

A An instrument that causes goods to be moved

Colgan-cross

by usually a public carrier, could be a bus, train or plane or truck, from one destination to a second destination.

Q Is it an instrument which can accompany goods through the hands of a subsequent owner or holders of those goods; in other words, if I, based upon your knowledge of the bill of lading, and its function in commercial transactions, if I acquired a quantity of goods, put it into the hands of a shipper, the bill of lading would go from me to the shipper in an ordinary transaction; would it not?

A I believe that's the way it would go, yes.

Q And when the shipper delivered it to a warehouse, the bill of lading could go from the shipper to the warehouse; is that correct?

A Not necessarily, the only copy --

Q Or a copy of the bill of lading to accompany the goods; is that correct?

A My understanding of a bill of lading is the trucker must return the bill of lading with the signature on it to his shipping firm to show a receipt of all the goods.

Q With the signature of the receiving warehouse?

A That's correct.

Colgan-cross

Q Do you recall whether or not the bill of lading which you were given by the employees at the CBS Warehouse, which reflected the receipt of the goods on the previous day, March the 13th, had a signature on it?

A Yes, I do, and it did not have a signature on it. The bill of lading did not have a signature on it.

Q With respect to the second day's shipment, March the 13th, I believe you testified and showed that the document which originally was a CBS Warehouse document, but which reflected the receipt of some goods; is that correct?

A I was told that the instrument from CBS reflected the receipt of those goods, but nowhere on that particular form was the word "Receipt" mentioned.

Q On that form, did a signature appear?

A Yes, it did.

Q I'm handing you Government's Exhibit 3, and I ask you: If that is in fact the signed copy of the paper reflecting receipt of the shipment on March the 13th, which was given you at CBS Warehouse?

A There is a signature on here from Mr. Mor Wercberger, that he informed me was his receipt as to the trucker for 3,032 cartons delivered on March the 13th, 1975.

Q I'm handing you Government's Exhibit 2A in evidence; is that a document which was identified to you as being something which was given to the truckman who delivered the shipment on March the 12th?

A Yes, it is.

Q Now, that is the document which, well, that is the document which originated in the CBS Warehouse; is that correct?

A That's correct.

Q And does that bear the signature of Mr. Mor Wercberger?

A He informed me that it was his signature on here, yes.

Q Did you have a discussion with Mr. Mor Wercberger as to why he signed Exhibit 2A but did not sign the bill of lading, which is Exhibit 2, I believe, both with respect to the shipment arriving on March the 12th, 1975?

A I don't recall the conversation. It did surprise me, with my knowledge of the paper work, in the usual course of business not to see his signature on the trucker's bill of lading, but he informed me that the piece of paper marked Government's Exhibit 3 and 2A, were receipts given by his company to the truckman.

Colgan-cross

Q Now would you refer to Exhibit 13, the document which you acquired after your interview with Mr. Wercberger, in which you understand came from Mr. Wercberger's pocket; had you, at any time, had occasion to add up the quantities of various Schick products which are reflected on the back of that piece of paper?

A No, I did not.

Q Okay. At the time when you interviewed Mr. Mor Wercberger, I believe you were shown the various relevant documents concerning this particular shipment from a file and that Mr. Chiam Kahan, I'm sorry, let me ask you this: Who was responsible for receiving the various documents that Mr. Mor Wercberger showed you during the course of your interview?

A To the best of my recollection, it was he.

Q So he then was obtaining those documents from where?

A From the desk and I believe a filing cabinet in a small office that they had at CBS Warehouse.

Q Did you ask to see it at that time, or did he show you any documents from any other transactions which he made in the ordinary course of his warehouse business?

A Yes, I believe I did ask that question.

Q Did he show you other documents?

A I also believe he did show me other documents.

Q Did you take any of those into your possession at that time?

A To the best of my knowledge, no, but I did, I believe I did compare other internal documents with the internal documents concerning the Schick products.

Q For what purpose?

A My main purpose was to determine why on some of the other internal documents he had names and addresses of the storage people, and on the delivery of Schick products that he said he got from International Trading, there was no address and that was my main point of interest.

Q As a matter of fact, well, did he show you any document in which he did not have the address, the address of the ultimate consignee?

A Yes, I believe there was at least one other internal document pertaining to another storage person or company, in which there was no address, but he was able to give me the address of that particular firm from either his memory or other notes.

Q And at any time during your conversation with Mr. Wercberger, did you discuss the practice of receiving

Colgan-cross

goods without the ultimate address, the address of the ultimate consignee?

A The only person I remember discussing that with was Mr. Chiam Kahan.

Q And this was on March 13, 1975?

A Yes, prior to the interview with Mr. Mor Wercberger.

Q And what did he say with respect to that subject?

A He stated that it is an unusual practice for his firm, CBS, to accept a delivery off the street from a truckman without truckman's papers, but that it could occur and when it did occur, his firm was very accurate in giving the truckman a complete receipt for those items delivered.

Q Is it a fact that he told you, in fact, it did occur to his knowledge on occasions?

A On occasions, yes.

Q Now, when you spoke with Mr. Mor Wercberger, did you discuss with him the existence or, how many employees were employed by the CBS Warehouse?

A I probably did but I don't recall exactly.

Q Did you obtain a list of those employees from him?

A I, myself did not obtain that list. I do know of one employee, Mr. Fisher from the previous encounter in February, and plus the other three gentlemen at that table said that they also worked there. I don't recall any other employees.

Q Did you interview Mr. Fisher?

A I don't recall.

Q Did you discuss at the time with Mr. Mor Wercberger or with Mr. Chiam Kahan, the question whether they expected a shipment of razor blades at or about that time?

A I don't remember asking if they expected it. I only recall their statement, stating that it came from International Trading Company. I believe Mr. Wercberger stated to me he got a call from someone representing International Trading Company.

Q Do you recall whether Mr. Wercberger told you he was expecting some razor blades from another customer, with whom he had done business at or about that time?

A No, I do not recall that, at all.

Q When you spoke with Mr. Mor Wercberger when you interviewed him on March the 13th, were you aware that a portion of the shipment of these stolen goods, a portion of the stolen goods had been delivered the day before to the S & F Warehouse?

A Yes, I was aware of that.

Q Where is the S & F Warehouse located, if you know?

A I believe it's in the Brooklyn Navy Yard, Building 77, just off of Flushing Avenue in Brooklyn.

Q About how far away is that from the CBS Warehouse?

A Approximately four miles.

Q Now, had you been to the S & F Warehouse previous to your going to the CBS Warehouse on March the 13th?

A No, I have never, I had never been to S & F prior to the 13th of March.

Q After the 13th of March, did you have occasion to go to the S & F Warehouse in connection with your investigation of the stolen Schick blades?

A Yes, I did.

Q And did you interview people there?

A I was present at the S & F Warehouse, but I don't recall interviewing anyone over there.

Q Did you obtain from the S & F Warehouse, Government's Exhibit 10?

THE COURT: Wait, the jury may be excused.

(The jury vacated the jury box.)

THE COURT: I want to make certain this is relevant, Mr. Youtt.

MR. YOUTT: Your Honor --

THE COURT: The mere fact that there was no sign of criminal intent on the part of S & F, if that be your purpose, is relevant to proving criminal intent on the part of these defendants, do you agree?

MR. YOUTT: I understand that, your Honor. Maybe I can outline --

THE COURT: I'll take an offer of proof.

MR. YOUTT: Number one, on Government's Exhibit 10, as the bill of lading which apparently was delivered to the S & F Warehouse, and the consignee indicated International Trading Company; it's a very similar type of bill of lading and one of the things I want to establish is that the same type of papers were delivered to both locations, and the other thing that I want to establish, is that a portion of the shipment in fact did go to S & F Warehouse, and again, identified as a portion of the stolen shipment.

My purpose in that is to explore the fact that this shipment apparently was split up between two ultimate locations, and nothing more. I really don't intend to get into the question of whether or not S & F was prosecuted or whether or not they had criminal intent.

THE COURT: That's where I thought you were going.

MR. CORCORAN: First of all, your Honor, Mr. Dowd did not obtain this document, to my knowledge from S & F, I believe Mr. Colgan did not, Mr. Dowd did.

THE COURT: It doesn't matter.

MR. CORCORAN: Well, accordingly the evidence has already been put through Mr. Pollari that part of the load did go to S & F.

THE COURT: That's another problem. I wanted to know whether Mr. Youtt was trying to show that S & F was not prosecuted and, they had part of the same shipment. So, this is probably selected prosecution, or it proves there was no criminal intent on the defendant's part.

MR. YOUTT: No. One other thing I want to establish is that there is no implicit connection between S & F and CBS, which certainly hasn't been proven positively, but it has been negated --

THE COURT: Do you agree with that, that there's no business connection, there's no relationship between the corporations S & F and CBS?

MR. CORCORAN: There is no relationship, as far as corporate officers or interlocking directors, I believe that one of the individuals working at CBS had a relative at S & F.

THE COURT: So, you may be opening up an area for the Government to explore, if you try to show there is no connection, I'll allow the Government to show there is.

Seat the jury.

MR. YOUTT: Okay.

(The jury was reseated into the jury box.)

Q Agent Colgan, I am handing you Government's Exhibit 10; do you know whether that exhibit was obtained from the S & F Warehouse?

THE COURT: By the Government, you mean?

MR. YOUTT: By the Government, yes.

THE WITNESS: Yes. I believe it was obtained by agents at the S & F Warehouse in Brooklyn.

Q And Government's Exhibit 10 has been identified, has it not, and the bill of lading which was delivered at the time of the delivery --

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Colgan-cross

MR. CORCORAN: I'll object to that, your Honor, I don't believe this witness --

THE COURT: Let's have the full question.

Q -- at the time that the shipment of goods was delivered to S & F Warehouse on March the 12th?

THE COURT: Sustained as to form.

Do you know whether this is the bill of lading that was delivered to S & F, representing goods that were part of the Schick shipment?

THE WITNESS: I don't feel qualified to answer the question, your Honor.

THE COURT: You don't know?

THE WITNESS: No.

Q Did you have a discussion with anybody at S & F Warehouse concerning Government's Exhibit 10, at any time?

A No. My only function at S & F was to help in driving a truck and the loading. I don't believe I questioned or interviewed anyone at the S & F Warehouse that night.

THE COURT: Driving a truck and loading after the evidence was seized by the Government?

THE WITNESS: That's correct, your Honor, thank you.

Q Do you know whether on March the 13th the CBS Warehouse received a shipment of Wilkinson blades, in addition to the blades which we are discussing here today?

MR. CORCORAN: I'm going to object to that, your Honor.

THE COURT: I'll allow it.

A No, I do not know.

MR. YOUTT: Okay, thank you. I have no further questions.

THE COURT: Anything, Mr. Corcoran; any further questions, I mean?

MR. CORCORAN: Yes, your Honor. Your Honor, I was awaiting the arrival of some cartons that haven't been brought down yet.

THE CLERK: Three cartons marked Government's Exhibits 14, 15 and 16 for identification.

THE COURT: Two cartons described as Schick Injector Twins, Fours, and one carton 2743, Dozen Schick Double Edged Razors.

THE CLERK: Three cartons marked Government's Exhibits 17, 18 and 19 for identification.

REDIRECT EXAMINATION

BY MR. CORCORAN:

Colgan-redirect

Q Agent Colgan, if you examine Government's Exhibits 14, 15 and 16, please: Can you identify those cartons?

A Yes, I can. These are three cartons received at CBS Warehouse on March 13, 1975, as being part of the stolen Schick products recovered in that premises. They have been initialed by Agent Dowd whose signature, or whose initials I do know.

Q Is that part of the shipment you seized on March 13, 1975?

A Yes, it is.

Q As retained evidence; is that correct?

A That is retained evidence.

Q What did you do with the remainder of the Schick products that you took out of the CBS Warehouse on March 13, 1975?

A They were returned to the company, to Time D.C. Trucking Firm Officials, who were present at CBS Warehouse with us, and took an exact count as the truck was being loaded with the merchandise.

(Continued on next page.)

Colgan-redirect

Q These are the representative boxes?

A These are representative boxes of the shipment, right.

Q Is there any way to tell, Agent Colgan, as you gathered these boxes or as you located them in the warehouse, whether or not these particular boxes came in on the 12th of March or the 13th of March?

A To my knowledge, no, I couldn't tell.

Q There are no consignee's names on the particular cartons; is that correct?

A That's correct, no markings other than "Schick".

Q You indicated on cross-examination that Government's Exhibit 2 was a document that Mor Wercberger provided as being the bill of lading that arrived with Schick products on the 12th of March; is that correct?

A That's correct.

Q And there is no signature of any trucker on that document; is that correct?

A That's correct.

Q Nor does Mr. Wercberger's signature appear on it?

A No, his signature does not appear on it.

Q And you indicated, I believe on cross, that

Colgan-redirect

this is the document Mr. Wercberger represented as the receipt that he gave to the trucker on the 12th of March?

A That's correct, the CBS Warehouse receipt to the truckman.

Q Allegedly pertaining to this shipment that came in?

A That's what Mr. Wercberger told me.

MR. CORCORAN: Your Honor, may we pass these documents to the jury?

THE COURT: Give them to the Foreman and I ask the Foreman to pass them on to the jury, to his left.

(Documents handed to the Foreman.)

Q Now, that was allegedly a shipment of 1654 cartons, according to the bill of lading?

A According to the bill of lading, the truckman brought into CBS 1,654 pieces.

Q And, according to the receipt it was one load?

A That's correct, no numbers.

Q I believe you testified earlier, the internal documents represented it was 1,606 cases?

A That's correct.

Q Government's Exhibit 3, allegedly the receipt turned over to you on March 13th to justify the remaining

Schick products in the warehouse, are those products which had been stolen on March 11th?

A That's correct.

Q Was there a bill of lading from the truck driver signed or unsigned with the shipment that came in on the 13th, according to Mr. Wercberger?

A No bill of lading for the 13th of March delivery.

Q No external documentation, at all?

A None whatsoever.

Q This is the sole document that related to the remainder of the Schick products that were found in that warehouse?

A That's correct.

MR. CORCORAN: Your Honor, may we pass this to the jury

THE COURT: It's in evidence; the document is in evidence, Mr. Corcoran?

MR. CORCORAN: Thank you.

(Documents are handed to the jury.)

THE COURT: Yes, you're saying? Mr. Corcoran, the document that you handed to the jury is marked in evidence, no question about it?

MR. CORCORAN: Yes, sir, it is.

Colgan-redirect

THE COURT: All right.

Q Would you examine these cartons marked Government's Exhibits 17, 18 and 19: Have you seen those cartons before, Mr. Colgan?

A Yes, I have.

Q Do you have any identifying marks on them that you can indicate you had seen them before?

A Yes. One of the three cartons, my own initials appear and the date of 2-5-75 and the other two cartons containing the initials of Special Agent Smith, whose initials I do know, and the same date of 2-5-75.

Q And you have seen those cartons before; and where have you seen them?

A These three cartons were taken from CBS Warehouse on February 5, 1975, and were part of a stolen shipment that had been taken in South Jersey, approximately January 30, 1975.

Q And those represent part of the shipment that you found in CBS Warehouse on February 4th, February 5th?

A That's correct.

Q And what happened to the remainder of that shipment that was received in CBS Warehouse at that time?

A Like the Schick products, the majority of the shipment was returned to the rightful owners, Whitehall

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Laboratories on the 5th of February, 1975, with a small number of cartons being kept as evidence by the FBI.

Q And I believe you identified Government's Exhibit 6 in evidence; is that correct?

A Yes, I did.

Q And you obtained that document from whom, sir?

A I obtained this document from Mr. Moische Wercberger on the 4th of February, 1975.

Q Did you inform him at the time the cartons before you were in fact illegally obtained from Whitehall Laboratories? ,

A Yes, I did.

Q And did he turn this document over to you then?

A Yes, he did.

MR. CORCORAN: Your Honor, may I pass Government's Exhibit 6 in evidence to the jury?

THE COURT: Please give it to the Foreman.

(The document was passed to the Foreman of the jury.)

MR. CORCORAN: At this time, your Honor, I move in evidence Government's Exhibits 15, 16, 17, Government's Exhibits 18 and 19.

THE COURT: Any objection?

MR. YOUTT: I have no additional objection.

THE COURT: All the objections you have are reserved.

MR. YOUTT: Thank you.

THE CLERK: So marked in evidence.

MR. CORCORAN: No questions.

THE COURT: Do you have anything further?

MR. YOUTT: Just a couple of questions, your Honor.

RECROSS EXAMINATION

BY MR. YOUTT:

Q Agent Colgan, with respect to the list, Exhibits 14, 15, 16, 17, 18 and 19, when your office received these, do you know whether they were opened to check the contents?

A No, they were not opened.

Q So then these items, these are in exactly the same shape as far as you know, the same condition as they were the day they were obtained from the CBS Warehouse?

A That's correct, to the best of my knowledge.

MR. YOUTT: I have no further questions. Thank you.

THE COURT: Of course, counsel are invited to open the documents in the presence of the jury, if you wish.

MR. YOUTT: I'll take the Agent's word for the fact they haven't been opened. I don't intend to make issue out of it, I wanted to know if they contained the same contents now as they did then, and I don't intend to challenge the Agent's testimony on that issue.

THE WITNESS: Counsellor, the plastic envelopes and perhaps the evidence papers added by us, but otherwise, they are as they were on March 13th.

THE COURT: Don't you think we should open to find if there is any merchandise in the cartons?

MR. YOUTT: It's certainly all right with me, your Honor.

THE COURT: Well, I think it ought to be done, the issue seems to be raised implicitly, if not expressly.

THE WITNESS: Do you want me to open them?

MR. CORCORAN: Please, examine the contents of Government's Exhibits 14, 15 and 16.

THE COURT: Open the inner box, also.

MR. CORCORAN: Your Honor, may I have one additional carton marked and identified, please?

THE CLERK: So marked.

THE COURT: Let the record show that the

package inside the exhibit contains three dozen Injector Twins and each dozen packed separately, and it has a display package of a Schick Injector Twin and, maybe you want to open the package within the package, to see what the merchandise is, so there's no question about it.

THE CLERK: Carton marked Government's Exhibit 20 for identification.

THE COURT: We find the package of Injector blades. Do you concede, Mr. Youtt, that if all the other packages were opened it would show the same merchandise?

MR. YOUTT: I can't concede that, your Honor, but I don't intend to challenge it. I don't consider it to be at issue in this case and I don't mean to suggest that thousands of empty boxes were delivered to CBS Warehouse.

THE COURT: Well, I don't know whether you raised the point, but it was a proper point to raise, so why shouldn't we know.

THE WITNESS: Do you want me to open them?

MR. CORCORAN: Yes, can you identify Government's Exhibit 20 also, Agent Colgan?

THE WITNESS: Yes, I can. This is also one of the Schick products obtained from CBS Warehouse on the 13th of March, 1975.

MR. CORCORAN: And that's a different product, according to the cartons than what you just opened; is that correct?

THE WITNESS: I stand corrected. I believe I said CBS Warehouse, this document was received at S & F Warehouse building.

RE-REDIRECT EXAMINATION

BY MR. CORCORAN:

Q Would you please open --

THE COURT: By box, you mean carton?

Q Would you open the carton marked Government's Exhibit 16, and indicate what is contained in there?

THE COURT: That's containing three cartons, each carton says "One dozen Double Edge Razors", and each carton contains two cartons, and each of those cartons contains a razor and a blade. All right.

MR. CORCORAN: Thank you, Agent Colgan; I have no further questions.

THE COURT: Any further questions, Mr. Youtt?

MR. YOUTT: I have no further questions.

THE COURT: You may step down, thank you. We will have a short recess. Please don't take the

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documents into the jury room, we'll return them 286 to the jury or who had possession of them.

(Short recess was held and the jury was excused from the jury room.)

THE COURT: Seat the jury.

(The jury is reseated into the jury box.)

THE COURT: I'm sorry it took a little longer than I expected. I had a matter unrelated to this and I thought it would take ten minutes but it took twenty-five.

All right, Mr. Corcoran?

MR. CORCORAN: The Government calls Mr. Frank Walsh.

FRANK WALSH, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Would you please state your name and spell it for the record?

THE WITNESS: Frank Walsh, W-A-L-S-H.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Walsh, by whom are you presently employed?

A I'm employed by Branch Motors Express as the terminal manager in Newark, New Jersey.

Q And what is your capacity, sir?

A Terminal manager.

Q And how long have you been terminal manager?

A Approximately a year.

Q And prior to that time, by whom were you employed?

A I was assigned with the Time D.C. Terminal.

Q What position did you hold with Time D.C. Trucking Company on March 13, 1975?

A I was the operations manager for part of the terminal.

Q What, if anything, did you do on that particular day, sir?

A Excuse me?

Q What did you do on that particular day, March 13, 1975?

A The latter part of the day we received a call that we had some freight that was at a warehouse in Brooklyn, and they had requested that I go over to take account of the freight that was at the warehouse.

Q Would that be the CBS Warehouse, 50th Street in Brooklyn?

A Yes, that and another one.

THE CLERK: Document marked Government's Exhibit 21 for identification.

Walsh-direct

Q Did you participate in the loading and removal of products or cartons from that warehouse on March 13, 1975?

A Yes, sir.

Q What type of product were there, Mr. Walsh?

A There were Schick razor blades and products.

Q I show you Government's Exhibit 21, and ask you: If you can identify that?

A Yes, sir. That's the count that we received from, of these products that we received from CBS Warehouse.

Q Is that in fact your receipt to the Bureau?

A Yes, that's my signature and Time D.C. Terminal, yes.

Q How many cartons did you remove from the CBS Warehouse on March 13th, 1975?

A 5,072.

Q By your memory, sir, do you recall what type of Schick products they were?

A They were razor blades, they were some hot lather, they were injector razors, in that category.

Q Do you recall offhand, sir, specification numbers that appeared on the cartons?

A We have records of that.

Q Is there anything that would refresh your recollection as to what the specification numbers were the 5,072 cartons?

A We took an inventory and we looked at cartons, the 5,000 cartons by the actual code number.

Q Did you count those cartons at the warehouse, sir?

A Yes, we did.

Q Did you count them subsequently elsewhere?

A Yes, we counted them when we got the trailer back to the terminal.

THE CLERK: Document marked Government's Exhibit 22 for identification.

Q I show you Government's Exhibit 22 marked for identification, sir, and ask you: If that document refreshes your recollection as to the item numbers on the particular cartons, the 5,072 cartons that were taken out of the CBS Warehouse on March 13, 1975?

A Yes, sir. These are the item numbers which were placed on the cartons and the number of pieces for each item number.

Q Would you tell us the item numbers and the number of pieces?

A 5601 was 1300 pieces. Item 3406 was 347.

Walsh-direct

Item 0274 was 219. Item 0694 was 340. Item 0340 was 143. Item 3103 was 30. Item 3101 was 452. Item 0424, 2,000 and Item 7997 was 241, total of 5.072.

Q Did you also remove quantities of Schick products from another warehouse known as the S & F Warehouse on that day?

A Yes, I did.

Q Does that document refresh your recollection as to what item numbers and how many cases you removed from the warehouse?

A Yes.

Q Could you tell us, please?

A From the S & F Warehouse in the Navy Yard, we had item 3109, 970 pieces. Item 3406, 469. Item 0340, 343 pieces, a total of 1,782 pices from S & F Warehouse.

MR. CORCORAN: Thank you. Your Honor, at this time I offer in evidence Government's Exhibits 21, and 22.

THE COURT: Any objection?

MR. YOUTT: No.

THE COURT: Let them be marked.

THE CLERK: Government's Exhibits 21 and 22 previously marked for identification, now marked in evidence.

MR. CORCORAN: I have no further questions of this witness.

THE COURT: Mr. Youtt?

MR. YOUTT: One moment, sir.

CROSS-EXAMINATION

BY MR. YOUTT:

Q Mr. Walsh, you testified that you were called sometime in the late afternoon of March 13th in connection with your coming over to make the count that you testified before?

A That's correct, sir.

Q Do you recall about what time that was?

A As I recall, I had taken the afternoon off; I was home at probably in the proximity of 3 or 4 o'clock, but I couldn't be any more definite than that.

Q Which warehouse did you go to first, if you recall?

A I went to the CBS Warehouse.

MR. YOUTT: No further questions.

THE COURT: You may step down. Thank you. Next witness?

MR. CORCORAN: The Government calls Mr. Strickland.

RICHARD STRICKLAND, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please state your name and spell it for the record.

THE WITNESS: Richard Strickland, S-T-R-I-C-K-L-A-N-D.

THE CLERK: Be seated.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Strickland, by whom are you employed?

A Warner Lambert.

Q And in what position, sir?

A I'm manager of manufacturing services with the personal products division.

Q How long have you had that position?

A Almost two years.

Q Was that your position in March of 1975?

A Yes, sir.

Q What products does Warner Lambert manufacture, sir?

A Primarily, the facility I'm in manufactures the Schick product line of razors and blades and shave cream.

Q And do you ship those products, do you distribute them nationally?

A Yes, we do.

Q Sir, did you ship a quantity of products on March 11, 1975 from Connecticut to Anaheim, California?

A Yes, we did.

Q And do you have any, pursuant to Government's request, did you produce records here today with regards to that shipment?

A Yes, I did.

Q Can you tell us, first of all, sir, on what trucking company and what number of truck was it that took the shipment from Warner Lambert Connecticut to Anaheim, California on March 11, 1975; can you produce the document, sir?

A Yes, I can. It was on Time D.C. truck 1047, bill of lading 20391.

Q And can you tell us, sir, what items were shipped on that particular truck on March 11, 1975?

A Yes, I can. Should I read them, would you like me to read them?

MR. CORCORAN: We have the document here; would you mark it please for identification.

THE CLERK: Document marked Government's

Exhibit 23 for identification.

THE COURT: Do you have knowledge of these matters, aside from the bill of lading that's before you?

THE WITNESS: I was not present when the truck was loaded, if that answers the question; it was loaded by people under my supervision, but not in my presence.

Q Can you identify the document, sir?

A Yes, I can. It's what we call a branch order request from our office to ship products from our manufacturing facility to one of the warehouses, and we put it on, was actually shipped as opposed to what they requested.

Q Did the shipment that went on the truck you referred to as 1047 reach Anaheim, California?

A No, it did not.

Q Did Warner Lambert suffer losses with regards to that shipment on March 11, 1975?

A Yes, we did.

Q And this document pertains to that particular shipment; is that correct?

A That's correct.

MR. CORCORAN: At this time, your Honor, I offer the document subject to connection.

MR. YOUTT: No objection.

THE COURT: Let it be marked.

THE CLERK: Government's Exhibit 23 previously marked for identification now marked in evidence.

Q Is that the branch order that pertained to the shipment that went out on March 11th?

A Yes, it is.

Q Are you able to tell from that branch order what items were shipped out on March 11th, Time D.C. Truck 1047?

A Yes, I can.

Q What was shipped out, sir?

A By reading, 46,800 pieces of item 5601. 4,920 pieces of item 3406. 7,920 pieces of item 274. 24,480 pieces of item 694. 35,208 pieces of item 340. 12,000 pieces of 3103. 6,000 pieces of 3101. 24,000 pieces of item 2470. 7,352 pieces of item 797.

Q You indicated these were pieces, sir; were products shipped individually?

A No. The product is shipped, in generally, in one dozen, six dozen or twelve dozen cartons.

Q They're in cartons or cases; is that correct?

A That's correct.

Strickland-direct

Q Does the branch order reflect how many cases or cartons of those particular items was shipped in Time D.C. Truck 1047?

A This particular branch order does not indicate that.

Q Do you have any document that would indicate the number of cartons that were shipped out on that truck?

A Yes, I do. That is a document derived from the branch order which would be taken, the number of pieces per carton and during the division.

Q You are referring to these items by number; what type of number is that, sir?

A It's an item number, it is the method that we use for identifying the product within Warner Lambert system. It's used by the manufacturing process and the distribution system.

Q Is that a specification number?

A Specification number, that is correct.

Q And that identifies a particular product produced by Schick; is that correct?

A That's correct.

Q As opposed to the particular item, as opposed to any given item it would refer to a product and not a specific?

A Yes, that's correct.

MR. CORCORAN: Let me have this marked, please?

THE CLERK: Government's Exhibit 24 for identification, marked.

Q Could you tell us what Government's Exhibit 24 for identification is, sir?

A It's a reconciliation on our part of the differences between the number of cartons shipped on the truck we just described and the number of cartons which were returned to us at a later date.

Q When the goods went out on March 11th on Time D.C. Truck No. 1407, were they returned to Warner Lambert?

A Most of them were, correct.

Q By whom were they returned?

A They were returned by the FBI.

Q On what date did you receive them?

A I believe that was March 19, 1975.

Q Referring to Government's Exhibit 24 then, can you tell us by carton number, how many cartons of that product was shipped out and how many cartons were returned?

A Yes, I can. 56-1, 1300 shipped.

Q Could you explain also, as you are doing that, what kind of items the specification number represents?

A I can. Item 560-1 is an injector twin razor blade; 1300 shipped out, 1299 returned. Item 340-6 is what we call a super two or bonded cartridge; 820 shipped out and 815 returned. Item 274 is a double edge razor, 220 cartons shipped out, 219 returned. Item 694 is once again, an injector 15 blades per injector, 340 cartons shipped out 340 returned. Item 340, similar to 340-6, not promotional, 489 shipped out, 485 returned. Item 3103 is a shave cream; 1,000 shipped out, 999 returned. Item 3101, once again is a shave cream, 500 sent out, 500 returned. Item 240 is a super two razor; 2,000 shipped out and 2,000 returned. Item 797 is another style of injector, 241 shipped out, 241 returned.

Q Based upon the number of cartons returned to you by the Bureau, that is the number of cartons and certain specified items, are you able to determine whether or not the cartons returned to Warner Lambert on March 19th were those shipped out by Warner Lambert on March 11th to Anaheim, California?

A I can say that the numbers correspond very, very closely.

Q Were there any items peculiar on the Anaheim shipment, new items or anything of that sort?

A The item 560-1 was the first time that item had been shipped to the Anaheim Warehouse.

Q I show you Government's Exhibit number 15 in evidence, and ask you: If you can identify that product?

A This is item 560-1.

Q That was the new product going to Anaheim, California on March 11th?

A That is correct.

Q And what quantity of those goods were returned to you with the shipment that came back on the 19th?

A They were.

Q How many were sent out and how many were returned?

A 1300 cartons sent out, 1299 returned.

Q Do your records reflect any cartons that might make up the difference between those sent out and those returned?

A Yes. In this particular case, we came up one carton over.

Q On a particular product?

A On this particular product, we received back one more carton than we could account for.

Q Is there any way you could explain that, sir?

A Yes. The cartons are all deck loaded, that is that each individual carton is put into the end of the truck. There can be anywhere from 5 to 7,000 put into a truck, and a discrepancy of 1, 2, 3, 4, 5 cartons is not unusual.

Q You were short a number of cartons, were you not?

A Wer were also short on item 340-6; we were short two cartons. Item 340, we were short four cartons.

Q Do your records indicate any of those cartons being retained by the Federal Bureau of Investigation?

A Excuse me, those numbers I just read had taken into account previously that there were seven cartons retained by the FBI.

MR. CORCORAN: Thank you, I have no further questions.

THE COURT: Mr. Youtt, any questions?

MR. YOUTT: Yes, your Honor, just a few questions.

I have no objection to this, your Honor.

MR. CORCORAN: Your Honor, I offer in evidence Government's Exhibit 24 for identification.

THE COURT: There being no objection, mark it.

THE CLERK: Marked Government's Exhibit 24 in evidence, previously marked for identification.

CROSS-EXAMINATION

BY MR. YOUTT:

Q Mr. Strickland, of the items which were returned to Warner Lambert, what was done with them, if you know?

A To the time they were returned, they were isolated for some period of time. They were later on returned into our normal inventory and sent back out into the field.

Q Shipped in the ordinary course of business, then?

A That's correct.

Q And I take it -- Strike that. When you, at the time March 9, 1975, were you in charge of the overall shipping by Warner Lambert of ship products throughout the country?

A No, sir.

Q Were you in a general supervisory position, sufficient to give you knowledge, with respect to the shipping operations of Warner Lambert of Schick products at the time?

A No. Only with respect to the shipments from the Milford location.

Q There are locations throughout the country; is that correct?

A That's correct.

Q The other locations also produce Schick products?

A They do not.

Q Schick products then are produced exclusively at the Milford location?

A That's correct.

Q So that all products, all shipped products shipped throughout the country, start at the Milford location; is that correct?

A That's correct.

Q And did you have a position sufficient to give you knowledge concerning the shipping operations of Schick products throughout the country in March, 1975?

A No, I did not.

Q Did the shipping take place from somewhere else, somewhere other than Milford?

A Yes, it does.

Q As far as the Milford shipping, does Milford ship to a specific part of the country or does it ship a specific type of product?

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Strickland-cross

A No. Milford ships, at that time, shipped to distribution centers which were located in various parts of the country.

Q Were these shipments which were ultimately returned to you,designated for distribution centers?

A Yes, it was.

Q All right, that's a distribution center, I take it then; quantities of the Schick products are distributed to wholesalers of pharmaceuticals and Schick products, correct?

A To any one of any number of classes of customers, yes.

Q And direct sales to retailers also; is that correct?

A I believe that's correct.

Q I take it that the shipment of Schick products from Warner Lambert in March, 1975 involved more than one or two truck loads a day; is that correct?

A (No response.)

Q Let me ask it in a different way.

A Yes, please.

MR. YOUTT: I withdraw that question.

Q About how many truck loads of Schick products were shipped from the Milford, Connecticut location in

March of 1975 or thereabouts?

A We should ship, I would estimate seven truck loads per week to all centers, combined.

Q To various parts of the country?

A Correct.

Q Now, you testified with respect to product 560-1, that is the product that you say was the first shipment of its kind to Anaheim, California?

A That's correct.

Q Was that a new product at that time?

A It was a new product in the sense that the packaging was unique.

Q Had that been, had that 560-1 product been shipped anywhere else in the country prior to the shipment to Anaheim, California?

A Yes, it had.

Q About how long had you been shipping from the Milford location, the product designated 560-1 as of March, 1975?

A The first shipment of that product took place on March 5th.

Q Is there a distribution center for Schick products in the New York City area?

A At that time, there was not. The closest distribution center was Littis, Pennsylvania.

Q And Littis, Pennsylvania, then supplied a wholesaler and retailer with Schick products in the New York City area; is that correct?

A That's correct.

Q And can you tell us, from your knowledge, whether the New York area was a major user of Schick products as opposed to a different area of the country in 1975?

A It is.

MR. CORCORAN: I object to the relevancy, your Honor.

THE COURT: I will allow it to stand.

MR. YOUTT: Thank you. I have no further questions.

MR. CORCORAN: I have no further questions.

THE COURT: You may step down. Next witness.

MR. CORCORAN: Government calls Thomas Cogar.

MR. YOUTT: Your Honor, may I be heard on this witness before the witness takes the stand?

THE COURT: The jury may be excused.

(The jury is removed from the Courtroom.)

THE COURT: Who is the witness and what is he going to testify to, Mr. Corcoran?

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MR. CORCORAN: Your Honor, the witness is an individual who at the time was an informant for the Brooklyn Strike Force, specifically working with the major custom and postal services. He was in what was known as the Robert's Lounge group, which is the group here involved.

He met on a daily basis with Jimmy Santa, the individual mentioned earlier, Stanley Diamond, the truck driver who previously pled guilty in this case, as well as a number of other individuals who were part of that group, participated in many hijackings here in the Eastern District during that time period.

Mr. Cogar was privy as to conversations which took place at or about the time of this hijacking, specifically, conversations taking place the date, well the day this hijacking was being unloaded, as well as about two days later, and finally, a week thereafter, conversations which related to the defendants in this case having purchased the load in question.

That is, he was privy to conversations between Mr. Santa and Mr. Stanley Diamond, as to whether or not these individuals would talk to the law after they were arrested, and also, whether or not they would pay for the goods that had been retrieved by the FBI. We offer this conversations as part of a continuing conspiracy which did not, in fact, and when the defendants were arrested, rather Mr. Cogar will offer statements of the co-conspirators, that these defendants indicated that they were meeting as late as two weeks after that regarding payment for the load.

THE COURT: He will testify to conversations had after the arrest?

MR. CORCORAN: After the arrest, but while the conspiracy continued.

THE COURT: What is your statement?

MR. YOUTT: First of all, your Honor, of course I'm not aware of the Government's entire case, which I suspect that there will be no independent establishment of a conspiracy to conceal after the arrest, or a conspiracy to receive payment of monies after the arrest. That the only evidence of this will be the testimony of hearsay assertions as coming from this witness, and further, I contend under the authority set forth in this Circuit and throughout the country, evidence coming in after an arrest, after the essential purpose of a conspiracy are by their very nature ended, certainly long after the delivery and in that case, long after the arrest itself, or the arrest itself are considered to be coming after the conspiracy has ended. And, therefore, not during the course of the conspiracy, they must be found to exist under the Federal rules of evidence in order to establish principles with respect to conspiracy hearsay.

Secondly, the conduct of these conversations is clearly occurring in a situation which was not in furtherance of a conspiracy, assuming that the conspiracy still did exist, which I strongly contend it didn't, they were apparently from what I can gather, reading the 3500 material supplied to me by Mr. Corcoran last night, apparently these took place at some sort of an informal gathering in this location out in Queens, which included a number of people, people who, one or two, are in the conspiracy, but a number of people who are not and apparently were just casual conversations after the fact, speculating according to this witness, on what might happen in connection with these defendants involved in this case and their arrest. Clearly, it's not in furtherance of the conspiracy and they come at a time after the conspiracy has ended.

I think the United States Supreme

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Court clearly recognized this as prejudicial in the case of Guttman v. Evans, and this Circuit has dealt with it on a number of occasions, the most recent that I was able to find last night was the U.S. v. Peccilli, 491 Fed. 2d 1108, and in that case, the conversations which were excluded came after the conspiracy to murder after the victim did in fact die, and some suspects were arrested. There were conversations after the fact with people who were allegedly co-conspirators with the alleged murderer, and they were excluded by our Circuit for the very principle that I have set forth.

Another case which shed light on the proposition is the case of the U.S. v. Birnbaum, 337 Fed. 2d p. 490, again unless there is an establishment by independent evidence of a continuation of a conspiracy which includes the concealment phase or some activities after the essential purposes of the conspiracy is completed, in this case as alleged in the indictment, the purpose was to receive goods and after the arrest in the case like this, then you suggest that it is clearly not competent evidence, and not competent evidence exception to the hearsay rule, under the Conspiracy Doctrine, and further, if it is to come in now without clear connection in advance, and later be excluded, I think it will permanently taint this jury in this particular case.

THE COURT: Whose statements will the witness offer?

MR. CORCORAN: I would like to add, your Honor, there are other factors. Mr. Cogar's testimony also relates to the car that was used in the hijacking, that is, it was not returned until I believe March 21st. He had conversations with Mannie Gomez relating to that car, which Gomez indicated that he had rental the car to be used in his own name and it had to be returned and so forth.

In the context of the evidence, it is that this conspiracy started some time before the hijacking when Mr. Pollari received a call that he was going to have work the next day; a half hour, or an hour later the truck was hijacked. While the truck drivers were being held captive, they overheard the conversations that the buyers are very well satisfied with the load, and a few hours, approximately twelve hours later the goods are being delivered into the warehouse of these individuals, and subequently, the conversations are between the conspirators who unloaded that truck and the man who drove that truck and pled guilty to that, that they,

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the defendants were actually referred to as the rabbis, and one of the corrections was that they're not actually rabbis they are Orthodox Jews that wear the beards and hats, and that they were standup people and would not talk, and that they were good for the money, they would pay for the load.

That these defendants --

THL COURT: Who made the statement?

MR. CORCORAN: Jimmy Santa. The man whose testimony indicates unloaded the truck with Mr. Pollari, and directed the delivery of the goods to the CBS Warehouse on the 12th and 13th of March, and Stanley Diamond, the individual who previously entered a plea of guilty to conspiracy in this case. A truck driver who operated with this group --

MR. YOUTT: But there's no doubt in the context of the 3500 statements, that they came after the arrest.

MR. CORCORAN: No question, they came after the arrest.

MR.YOUTT: There's also no doubt they were made in the context of apparently a social gathering, and in no way connected with any furtherance of any purposes of this alleged conspiracy.

THE COURT: Not all post conspiratorial

statements are inadmissible.

MR. YOUTT: I know, but I would contend we have to establish by extrinsic evidence the existence of a continuing conspiracy, or a conspiracy to either conceal or go on with whatever object of the conspiracy the Government alleges.

MR. CORCORAN: I'd suggest, your Honor, that the possession of the stolen goods by these defendefendants indicates the conspiracy, and that they participated in the continuing cover-up is clear from the events even in existence today, there was no coming forth by the defendants to reveal the scope of the conspiracy.

MR. YOUTT: Now we're asking to waive the Fifth Amendment, in terms of providing underpinning for the Government's case, which doesn't exist.

MR. CORCORAN: Not at all. The evidence is they had meetings after --

THE COURT: Don't talk to each other, if you want to talk to each other do that on the curb, I'll leave the Bench. If you want to argue the matter before me, argue the matter before me.

MR. CORCORAN: I'm sorry, your Honor.

MR. YOUTT: On that point, your Honor, I just want to state you can't say to somebody that it's evidence that they continued the conspiracy by virtue of the fact they have declined to waive their Fifth Amendment privileges during the pendency of this action.

MR. CORCORAN: I wasn't suggesting that, your Honor.

THE COURT: The conspiracy alleged is to possess the goods, there's no question that the possession ceased when the goods were seized by the Government, right?

MR. CORCORAN: The actual possession, I agree, your Honor. I suggest, your Honor, though, since we're dealing here with a supplier-purchaser relationship, and that the evidence would indicate these defendants were purchasing the goods from Mr. Santa and the individuals who committed the hijacking for them, that that buyer-seller relationship didn't cease. The conversations which indicate that they had meetings with regards to payment of those goods is evidence that the conspiracy to possess continued.

THE COURT: The case which I am thinking of is one of my own, the United States v. Fran$\overset{z}{c}$ese, where I permitted proof of payment of funds to the witness that was supposed to be used as support of the family and proof of the demand for funds to pay

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for lawyers and for bondsmen. This, of course, happened after the arrest, all done to carryout the terms of the conspiracy and to conceal the purposes of the conspiracy.

The testimony was that this was all part of the conspiracy. Here we have proof that the defendants were purchasers of the merchandise and the conversations concerned the carrying out of the deal, which is part of the conspiracy.

Suppose, Mr. Youtt, there was no arrest.

MR. YOUTT: There was no arrest?

THE COURT: Suppose there weren't.

MR. YOUTT: If there was no arrest and the goods continued in the possession of these defendants, first of all, I would contend at the time they received the goods the conspiracy was completed, from their standpoint. If, on the other hand there was independent evidence of payment that might be that some discussions in furtherance of a conspiracy, in other words, among co-conspirators, the purpose of carrying it out might be admissible under the hearsay aspect.

THE COURT: Wouldn't payment for the goods be evidence that they received it?

MR. YOUTT: Payment for the goods, of course, if proven would be.

THE COURT: I'll ask you to make a further assumption. Let's assume the goods were disposed of, delivered elsewhere and the Government never took possession. In order to prove that they did receive it, the Government offered proof that payment was made or discussed in the meeting of March 14, 1975, at 115-30 Lefferts Blvd.; would that be admissible?

MR. YOUTT: Without the arrest, which is the most abrupt termination of a conspiracy that I can think of --

THE COURT: That's not always true, I've held on a number of occasions that my experience has taught me, that narcotic conspiracies, a conspiracy is continuous while the defendants are in jail, during trial, after the trial and after the parties were sentenced. I've known conspirators to continue the conspiracy, so an arrest is not necessarily the termination of the conspiracy.

MR. YOUTT: I would submit to your Honor, that under the cases, the cases generally consider the arrest to be a termination of the conspiracy, unless it can be established by additional evidence, that there was a concealment phase which is independently

61 establishable as a separate component of the conspiracy.

THE COURT: Do you know ~~of~~ a conspiracy that, where one of the purposes is to conceal the purpose of the conspiracy; can you think of one?

MR. YOUTT: Certainly.

THE COURT: How?

MR. YOUTT: If a person who is arrested, and immediately upon being arrested says, "I was a member of the conspiracy".

THE COURT: That's the revelation of the conspiracy. I am talking about a conspiracy, parties getting together to perform a criminal act; can you think of a single conspiracy that's not organized with a view to keeping that secrete; of course not.

MR. YOUTT: It's certainly organized with a view, a criminal conspiracy is not organized to be open and not --

THE COURT: Do you think it would make any difference, if we find in some conspiracy charges that the count alleges one of the purposes of the conspiracy was to conceal the place of where the stolen goods were to be kept, to conceal the transportation of the stolen goods, to conceal the customers of the stolen goods, to conceal payments, 62 do you think that that would make any difference? It's very often those are. Concealment allegations are made, you know and --

MR. YOUTT: I understand that, your Honor, but it was not part of the conspiracy, and it cannot be established by extrinsic evidence. It can only be assumed that once someone, it can only be assumed, but in the absence of additional evidence, it can only be assumed that person who was arrested as a co-conspirator terminates his conspiracy, and the only concealment that he engages in is the activities which were protected by the Fift~~y~~h Amendment, which means, he doesn't have to come forward unless he determines to waive his Fifth Amendment rights and that's the only thing that can be used in this case, unless it can be established by evidence outside the hearsay, that a concealment phase, or additional phase of this conspiracy continued after the arrest.

THE COURT: I would think that at best, you'd be entitled to a charge that presents the question of the termination of the conspiracy to the jury, and to say to them, that if they find that the conspiracy ended as to these defendants on arrest, then any conversations had among the others couldn't possibly

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be charged to them.

But, I'm trying to recall everything that was done in the Francese case. I permitted evidence by lawyers as I recall, as to solicitation of their services, engagement of their services by witnesses. There was advance payment of fees --

MR. CORCORAN: Your Honor, I think the key to the answer is what Mr. Youtt has suggested, a concealment phase or any other phase. The phase here is that which is normally contemplated in a relationship of purchasers.

THE COURT: No, the point is, first these activities that the evidence is offered on was to carry out the terms of the conspiracy.

MR. CORCORAN: Exactly. I think independent evidence of that contemplation on the part of the parties can be found in the documents themselves. The jury can find from the documents that these individuals were not taking the goods in as warehousemen and they contemplated other than just storing them for somebody; that these are not the kind of documents that the normal warehousemen would accept on the face of them, they don't even contain the responsibility of the warehousemen, because it doesn't contain an accurate count as to the cartons.

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MR. CORCORAN: (Continuing) There is a relationship going beyond that of warehousemen, as established by that evidence, proof they can find that these individuals were purchasing the goods and that purchasing requires the payment of money and means to pay that money is still in furtherance of the same conspiracy, and within the scope of the original conspiracy.

THE COURT: I would think so.

MR. YOUTT: Your Honor, again I want to stress this point is absolutely critical to this case, because I would certainly contend that if the jury were given that instruction, in light of the nature of this testimony, they would be almost, it would be almost impossible for them to follow it, for them to conclude, well there may have been a conspiracy, but we don't have proof that it continued to this point, therefore, we will exclude the hearsay assertions which are extremely strong at this particular --

THE COURT: Well, if you object to it, I won't give it.

MR. YOUTT: The point I am objecting to is the introduction of the testimony, because I don't think the jury could follow that instruction,

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certainly I would want it rather than nothing, but I just don't think they would be able to exercise those kinds of mental gymnastics.

THE COURT: Well, that phrase has been used in a number of cases and, unfortunately, in a Supreme Court case, but I disagree with those eminent jurists who say that the juries can't follow instructions. I've got a lot more faith in juries than they have.

I've seen juries come in with not guilty verdicts, where the evidence indicated that the defendants were indeed guilty, but the verdict rested on whether certain evidence should or shouldn't be considered.

MR. YOUTT: Your Honor, again, I cite again the authorities to this particular area, the Corwich case which is the U. S. Supreme Court from 1949, which was the underpinning for what had gone before, 336 U.S. 440, again it comes, aoccurred a month and a half after the actual events of the actual conspiracy.

THE COURT: You see, Mr. Youtt, they are two separate and distinct doctrines, one is whether post-conspiratorial act or statements may be introduced and of course, whether they're committed

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by one of the participants to the charge, they are usually admissible against that individual to prove that he was indeed a member of the conspiracy, that's one.

MR. YOUTT: And, as an admission against interest of that individual.

THE COURT: Well, but still is after the conspiracy to determine whether he was a member of the conspiracy. The other is whether the conspiracy was still in existence.

Now, of course, acts, declarations of a conspirator is chargeable against an accused even though he wasn't there, if he is a member of the conspiracy, and if it's during the term of the conspiracy. You're arguing that the conspiracy ended with the arrest, when the Government took possession of the merchandise.

MR. YOUTT: That's half of my argument, your Honor, that's the half which says it was not during the course of the conspiracy.

THE COURT: Let's talk about that half.

MR. YOUTT: Okay. Now, if the Government --

THE COURT: Let's assume there was actual delivery of the money and the witness was able to testify that the money was delivered, there is no question that that would be admissible against the defendants on the first theory I indicated.

MR. YOUTT: That would not be in any way a violation of the hearsay rule, it would be a competent evidence to the conspiracy. If that evidence was there and followed by hearsay declarations, the nature of what we anticipate from this witness, then certainly if the hearsay declarations occurred before the delivery of money, the conspiracy is proven by extrinsic evidence to continue beyond the arrest and termination of possession, but, without that --

THE COURT: What do you mean, "extrinsic evidence"? You mean after the arrest these defendants got together, one to the other one and said the conspiracy continued, it doesn't end with my arrest; do you mean that in effect --

MR. YOUTT: In effect, the arrest and termination of possession will terminate the conspiracy, for purposes of evaluating hearsay exceptions.

THE COURT: But, the terms of the conspiracy weren't carried out, payment wasn't made.

MR. YOUTT: We have no extrinsic evidence of that, whatever, your Honor.

THE COURT: The jury heard that these defendants were the purchasers, that they were the purchasers, they owe the money.

MR. YOUTT: They only heard that in the opening statement, they didn't hear it from any witnesses.

THE COURT: Wasn't the testimony to that?

MR. CORCORAN: Not in direct, your Honor, only circumstantial.

MR. YOUTT: None whatsoever.

MR. CORCORAN: That's the conclusion we'll argue to the jury.

THE COURT: What's the circumstantial evidence?

MR. YOUTT: The testimony from the driver, that the buyer was being well satisfied.

MR. CORCORAN: That begins it, that the buyer is well satisfied, and 12 hours later the goods being delivered into the warehouse of these defendants, being delivered in there by Manny Gomez, among other people, who the Government will prove, will show, rented the car that was used in the hijacking.

It's so closely wound in together, that based upon the evidence, plus the documents thatthe defendants produced to show their rightful possession, allow the jury to conclude they didn't merely store these goods, but that they were involved in the conspiracy to hijack the truck, as well as possess the goods.

I think the hijacking was part of the conspiracy to possess.

MR. YOUTT: That is not in the record now, maybe there are to be some witnesses, thatI don't know about, and maybe this is all for naught, but I don't think so.

THE COURT: Do you agree, Mr. Youtt, that if there was proof in the record that these defendants were purchasers and this testimony would be relevant and would be admissible?

MR. YOUTT: If there was proof that these defendants were purchasers, and they didn't fully pay that, that their payments, arrangements continued after the conspiracy, if there was proof of that, then possibly they were still --

THE COURT: You keep saying after the conspiracy?

MR. YOUTT: I'm sorry, after the arrest and termination of possession, but none of that is here and I don't think it's going to come in unless we credit the hearsay which is bootstrapping the conspiracy theory.

THE COURT: Well, I'm going to call a lunch

6 recess at this point and I'll consider the point.

MR. YOUTT: Can I also present the point of being outside, or not in furtherance of the conspiracy, because there's a specific citation to that particular question, also, your Honor. In other words, assuming that the conspiracy did continue through March the 19th, the hearsay statements were made not during, in furtherance of the conspiracy, they were in effect what the Court, what the Second Circuit has labeled --

THE COURT: That's basic, I don't need a citation for that, I've been charging the jury that without citations, that it has to be --

MR. YOUTT: I mean, the cases that I have, deals with the particular issue, have dealt with the fact patterns in which statements are made, and were held to be not in furtherance of the conspiracy, called narrative questions.

THE COURT: Seat the jury.

(Jury is in the jury box.)

THE COURT: We'll take our luncheon recess at this time, and the case will continue at 1:15. The jury is excused.

(Luncheon recess taken.)

AFTERNOON SESSION

THE COURT: I find under these circumstances, that evidence of conversations concerning payments of the merchandise that was subsequent to the arrest are admissible. This is first, not a statement made after the conspiracy had terminated, on the Government theory and there is evidence to support the Government's theory, payment was due to the hijackers for the merchandise. The case is clearly distinguishable from Crulewich and Crulewich, in which Mr. Justice Black indicated that the conspiracy had terminated. It was a charge of violation of the Mann Act, and Judge Black said on page 442 of Crulewich, and I quote, "It is beyond doubt that the central aim of the alleged conspiracy, transportation of the complaining witness to Florida for prostitution, had he never exercised or long since ended in success or failure, when and if the alleged conspirator made a statement attributable to her", and in discussing the point in the United States against Franchise, at 964, Judge Friendly distinguished Crulewich and Ledworth and Grunewald, and I won't give the full citation here, they're all written out there, from the case at hand, he said, "The furnishing of bail and lawyers had been an agreed party of the conspiracy

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from the beginning, designed in part, to permit its continuation of this act should some mishap befall any member, the defendants are thus mistaken in relying on such well-known decisions", and he went on.

Further, on discussing Grunewald, Judge Friendly said, "There's a difference between concealment where the concealment is part of the conspiracy and shown to be part of the conspiracy."

If the act of concealment occurred, then they may be introduced as part of that conspiracy, however if the concealment was not part of the original conspiracy, but after the conspiracy had been completed, then the parties got together and said "let's go this," and "let's do that," to conceal our criminal act, that's a different conspiracy, obviously not part of the original conspiracy and would not be admissible.

In this case, as I say, there is evidence that payments were due, that was part of the original conspiracy and conversations concerning the payments made or had outside the presence of these accused may be offered, because they were made during the conspiracy and in furtherance of the objectives of the conspiracy, or in the objectives, the conspiracy

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was to receive and possess the merchandise and of course, pay for it.

Seat the jury, and let's go on.

MR. CORCORAN: Your Honor, can I mark the 3500 material?

THE COURT: The Franchise citation, if you want it, incidentally, 392 Fed 2d 954, and I read from 964.

THE CLERK: Nine-page document marked Government's Exhibit 3500-13.

(So marked.)

THE COURT: Incidentally, there is a case in the Ninth Circuit, United States against Paysor, 501 Fed 2d 966, I find it difficult to agree with the entire citation, because I don't think the rest has anything to do with you, it says the action of conspirators subsequent to his arrest but prior to the arrest of the others, were admitted in evidence against Paysor's arrest terminated his participation in the conspiracy, in the sense that the action and declarations following the arrest do not bind and may not be introduced against other conspirators, but the converse is not true, and on arrest the conspirator is still operating in furtherance of the conspiracy, may say and do things which may be

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introduced against the arrested, one, if the conspiracy is still in operation.

Citing another Ninth Circuit case, the United States against Wenc, 456, 537, I find that the arrest had nothing to do with it, that's just one factor to determine whether the arrested person is out of the conspiracy, withdrew from it, and that's about all I respectfully differ with from the quote of which I just cited.

THE CLERK: Nine pages of reports marked Government's Exhibit 3500-13; the Grand Jury minutes of Mr. Colgan marked Government's Exhibit 3500-14; two-page report dated September 19, 1975 marked Government's Exhibit 3500-15; and the Grand Jury minutes of Dvine marked Government's Exhibit 3500-16.

(So marked.)

THE COURT: Now, as I understand it, Mr. Youtt, you are objecting to the testimony based solely on the grounds that the conversations were subsequent to the termination of the conspiracy?

MR. YOUTT: No, it's also based on the grounds even during the conspiracy, it was not an act in furtherance of the conspiracy, it was merely a narrative declaration of the past facts or conditions.

THE COURT: So, it's limited to those two objections and nothing else, as I understand it?

MR. YOUTT: Aside from my overriding objection, to the concept of the conspiracy consisting merely of the purchase and sale, and in a receipt transaction which I argued with the Court a year or so ago, I contend a simple purchase and sale cannot be a conspiracy, and the substantive offense itself, it's not a conspiracy, but a substantive offense and certainly, I'll make it a part of my motion for acquittal, but it certainly, I just brought it to the attention of the Court sometime before.

THE COURT: That is related to what you are saying, but there is no objection that you can see at this point to the testimony, other than --

MR. YOUTT: Not at this time, no, your Honor.

THE COURT: All right. I think we're now finally ready to proceed, Mr. Corcoran.

Seat the jury.

(The jury is in the jury box.)

MR. CORCORAN: Your Honor, at this time, I request permission to recall briefly Mr. Strickland of Warner Lambert.

THE COURT: Please resume, Mr. Strickland.

MR. STRICKLAND, having been previously duly sworn, resumed the stand and testified further as follows:

REDIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Strickland, you are still under oath.

I show you what has been marked as Government's Exhibit 23 in evidence, sir, that is the branch order pertaining to Warner Lambert load of shipment of March 11, 1975; is that correct?

A Yes.

Q Can you tell us, the value of that particular quantity of product?

A Yes, I can. The manufacturer's cost of the product was $81,858. The invoice price to the trade would have been $248,178.

Q Would that be what is normally considered wholesale value?

A That is correct.

Q What would be the retail value of the shipment, in toto?

A Making the assumption that it sold for suggested retail price, the value would be $405,141.

Q Looking at Government's Exhibit 22 in evidence, and referring to the item numbers on the top of

Strickland-redirect

that document, those total 5,072 cartons are the goods returned to you from CBS Warehouse.

Can you estimate, sir, the approximate wholesale-retail value of that portion of the shipment?

A That would be, I estimate somewhere in the order of 65 percent of the numbers I just read.

Q Wholesale, and retail?

A That's correct.

MR. CORCORAN: Thank you. I have no further questions.

THE COURT: Do you have any questions Mr. Youtt?

MR. YOUTT: No, your Honor.

THE COURT: You may step down, thank you.

(Continued next page.)

THE COURT: Your next witness, Mr. Corcoran.

MR. CORCORAN: At this time, your Honor, the Government calls Thomas Cogar.

THE COURT: Shall I charge the jury as indicated on this, Mr. Youtt?

MR. YOUTT: Yes, your Honor, please.

THOMAS COGAR, called as a witness, having first been duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Please state your name and spell it for the record.

THE WITNESS: Thomas Cogar, C-O-G-A-R.

THE CLERK: Please be seated.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Cogar, how old are you?

A Thirty.

Q Are you married?

A No, sir.

Q Are you presently employed?

A No, sir.

Q What's your present status?

THE COURT: All right, now. The jury may be excused.

(Jury leaves the courtroom.)

THE COURT: Is this witness in protective custody?

MR. CORCORAN: Yes. I wasn't referring to that, he was instructed not to report as to the Witness Protection Provision, but he is presently incarcerated on a state charge in another jurisdiction.

THE COURT: I understood he was in protective custody.

MR. CORCORAN: He is, your Honor.

THE COURT: You are not supposed to say anything about being in protective custody or any threat or fear or anything else; do you understand that?

THE WITNESS: Yes, sir.

THE COURT: All right, we'll seat the jury.

(Jury now seated in the courtroom.)

THE COURT: I prefer a leading question in this area, Mr. Corcoran.

MR. CORCORAN: Yes, your Honor.

Q Are you presently incarcerated, Mr.Cogar?

A Yes, sir.

Q On what charges?

A Attempted burglary and possession of stolen property.

THE COURT: You'll have to talk louder.

THE WITNESS: Simple burglary and possession of stolen property.

Q And are those Federal charges?

A State.

Q When were you arrested?

A December 28, 1976.

Q This past month; is that correct?

A Yes, sir.

Q Have you been convicted of those charges?

A No, sir.

Q They're outstanding; is that correct?

A Yes, sir.

Q Have you ever been convicted of a crime?

A Yes, sir.

Q What crime have you been convicted of?

A In 1963, youthful offender and I'm not sure of the other date, assault third degree, harassment and assault, third degree.

Q Youthful offender in 1963 relates to what charge?

A Stolen auto.

Q Haveyou served any time in prison other than the last month?

A Reformatory, yes.

Q How old were you when you went to the reformatory?

A Sixteen.

Q And how long were you in the reformatory?

A Seventeen months.

Q Have you been incarcerated since then on any other charges?

A Yes.

Q How long have you been in jail?

A I'm presently in jail.

Q I mean other than that?

A No, no, sir.

Q Have you entered into any agreement with the United States Government with regard to the charges presently pending against you?

A Just to the effect that a letter would be written on my behalf, making known that, my cooperation with the Government.

Q In this and other cases?

A Yes, sir.

Q You have been cooperating with the Government on other cases; is that correct?

A Yes, sir.

Q Have you ever been an informant for the United

States Government?

A Yes, sir.

Q When were you an informant?

A From July 1974 till May 30, 1975.

Q And were you working with a particular agent?

A Yes, I was working with the Inspector, Agent Pissuli and Special Customs Agent Bratten.

MR. YOUTT: Your Honor, I'm having a little difficulty hearing the answers.

THE COURT: Would you please read that back, Mr. Klimaszewski?

(Record read.)

Q When you say you were an informant, Mr. Cogar, and I ask you to speak up so that all the jury can hear you, you say you were an informant at that time between July of '74 and May of '75; were you working in an undercover capacity?

A Yes, sir.

Q You weren't making known to anyone your informant status; is that correct?

A That's correct.

Q Were you receiving any payment for this service to Agent Pissuli and Agent Bratten?

A Yes, sir.

Q How much payment did you receive?

A I'm not sure of the exact amount, but there were various sums at various times.

Q For instance, approximately how much and how often?

A I don't remember it exactly.

Q Do you know an individual by the name of Jimmy Santa?

A Yes, sir.

Q Stanely Diamond?

A Yes, sir.

Q Manny Gomez?

A Yes, sir.

Q Did you see those individuals on or about March 12, 1975?

A Yes, sir.

Q Were you working as an informant at that time?

A I was.

Q Where did you see those individuals at that period, during that period?

A I first encountered them at the Lefferts Dress Shop at 114-43 Lefferts Boulevard, Queens.

Q Did you know Mr. Santa at that time?

A Yes, sir.

Q How long had you known him as of March 12, 1975?

A Approximately one year.

Q And Mr. Diamond?

A Approximately one year.

Q And Manny Gomez?

A Approximately six months.

Q What is the Lefferts Dress House, what is your relationship to it?

A My father-in-law owned it.

Q Where did you live at the time?

A 114-29 Lefferts Boulevard.

Q Is that in the area of the dress shop?

A It's four doors away.

THE COURT: You said you aren't married?

THE WITNESS: No, I'm not, sir.

THE COURT: So it's your former father-in-law?

THE WITNESS: Yes, sir.

Q Have you since been divorced?

A Well, marriage was never legal by New York State law.

Q Calling your attention to March 14, 1975, approximately 10:30 in the morning, where were you at that time, Mr. Cogar?

A In the dress shop.

Q Who else was present in the dress shop at the time?

A Myself, Mr. Santa, Mr. Diamond, Mr. Zita, that's my father-in-law, his brother, Joseph Zita, and Paul Vary , Jr.

Q When you refer to Mr. Santa, you are referring to Jimmy Santa?

A Yes, sir.

Q And Mr. Diamond, Stanley Diamond?

A Yes, sir.

Q What were you doing at the time in the dress shop?

A Stretching material.

Q For what purpose?

A To lay a pattern and cut it out to make dresses.

Q And what were the other individuals doing?

A Mr. Santa was reading the paper and Stanley Diamond was at the end of the stretching table.

Q Any conversation take place at that time, March 14, 1975?

A Yes. Mr. Santa handed the paper to Stanley and said, "What do you think of the rabbis?"

Stanley replied, "Don't worry, don't worry, they're stand-up people."

MR. YOUTT: Objection.

THE COURT: On the same grounds that you --

MR. YOUTT: No, your Honor. It relates to -- I'd like to approach the side bar.

THE COURT: The jury may be excused.

(Jury was excused from the courtroom.)

MR. YOUTT: The testimony that this witness has just started to give, his words to the effect, "Don't worry about them, they're stand-up guys," I anticipated that, your Honor, that type of evidence is going to the area of what you're referring to as concealment and not to the question of payment.

If it is, then I would contend that this is not part of the conspiracy that we're dealing with, and not part of the testimony which has been mentioned by your Honor's previous ruling.

THE COURT: Well, I think you misinterpreted it. Let's have the full conversation.

Tell us what you said, Mr. Cogar?

MR. CORCORAN: Perhaps I could elicit it from Mr. Cogar?

THE COURT: Okay, go ahead.

BY MR. CORCORAN:

Q Were you present at the conversation that just took place, Mr. Cogar?

A Mr. Santa said to Stanley Diamond, as he handed him the newspaper, pointing to an article, he said, "What do you think of the rabbis?" Stanley Diamond replied, "Don't worry, they're stand-up people." That they wouldn't talk, no, excuse me, not that they won't talk, they won't get anything out of them.

Q Did you observe what was in the newspaper, what they were referring to?

A Yes. It was an article concerning a hijacking of razor products that had been recovered.

Q Did you have any further conversation with Mr. Santa on that day?

A I did.

Q And where did that take place?

A We left the shop to go over to 114-43 Lefferts Boulevard.

Q To Tommy Reel's residence?

A Yes.

Q Did you have any conversation at that time with Mr. Santa?

A Mr. Santa went in the room and Stanley -- wait, Stanley, Mr. Santa said to Stanley again, he asked him what he thought of it and they told him, "Don't worry, they're stand-up people." This is on the 12th or 14th.

Q I'm talking about the 14th of March, 1975?

A Right.

THE COURT: This is after seizure by the FBI's agents?

THE WITNESS: Right, Mr. Santa left to make a phone call.

Q Were you privvy to any conversations about money during that period of time?

A Yes, but that I'm a little confused, there was different conversations.

Q Calling your attention to the 19th of March, 1975; where were you at that time?

A In the card room.

Q Please speak loudly, Mr. Cogar.

Card room, you're referring to Tommy Reel's house?

A Yes, sir.

Q Who was present on the 19th of March?

A Myself, Mr. Diamond, Mr. Santa and Mr. Manny Gomez.

Q Any conversations take place at that time?

A Yes. Mr. Stanley Diamond asked me, Mr. Santa, if he was going to get any money. He said he needed some money to go to Virginia to give his lawyer for a case he had there.

Mr. Santa said that he was going to meet with the rabbis on Saturday to discuss money matters, and Mr. Santa got up and went to thephone, to use the phone inside the house.

And, Stanley commented that people think the Italians had all the money but it was really Jewish people that had all the money, that they keep it buried and not in banks.

The money that they had previously received was brand new one hundred dollar bills wrapped with, bearing the mark of the Star of David on it.

Q Did he indicate from whom he received that money he was referring to?

A To the conversation, it was about the Shick Products.

Q Did he indicate from whom he had received that money he was referring to?

A Well, the rabbis is how he referred to them.

Q Did you question whether or not they were in fact rabbis?

A I did.

Q What was Mr. Diamond's answer?

A I asked Mr. Diamond, I said, "Do you mean they were actual rabbis that got a beard?" He said, "No, they were Orthodox Jews, black hats, beards."

THE COURT: What was the conversation, if any, with reference to paying the money to Santa?

THE WITNESS: Santa had already got some money.

THE COURT: Was that discussed?

THE WITNESS: The reference to the money was that the money he got from the rabbis was brand new one hundred dollar bills, with the wrapper bearing the Star of David on it.

THE COURT: Did he say when he got the money?

THE WITNESS: Not exactly.

THE COURT: Well, did he say what it was for?

THE WITNESS: No, sir, no, he didn't. He just said he got money from, he was going to see about getting the rest of themoney. Well, the conversation started, he asked Stanley Diamond, "Do you think that they will pay?" And Stanley replied, "Yes, I don't think you'll have any problem with it."

Q Did he indicate when he was going to get more money?

A On Saturday.

Q The coming Saturday?

A That would be the following Saturday, after the 19th.

Q And did he indicate from whom he was going to get more money?

A Well, the conversation was about the rabbis, it never changed to anybody else, so I assumed that's who he was talking about.

Q Did they discuss for what they were getting money?

A For the load is how they referred to it.

Q Was there any reference to the razor load or Shick load?

A No, that conversation, no, sir.

THE COURT: Well, apparently the Defendant objects to the testimony that indicates that the Defendants would not talk or implicate them; how is that admissible?

MR. CORCORAN: It is still a statement of conspiracy, in furtherance of the conspiracy, while these individuals may have been arrested, the conspiracy was continuing, and the conspirators were voicing their concern about whether or not they were going to be subject to any investigation or arrest themselves, and the opinion of one co-conspirator about the reliability of the other seems to me within the scope of conspiracy.

THE COURT: That may very well be a statement that doesn't further the purposes of the conspiracy. This is one man's opinion of another co-conspirator, it may be that there are times when I've admitted that kind of evidence, where reliability of the co-conspirator had to be established in order to promote the business, but how does this in any way --

MR. CORCORAN: To the extent that it conceals the evidence within the realm of the conspiracy, this conversation would affect the direction the conspiracy took thereafter.

One, they were discussing essentially what was to be done after the fact, the conspirators had been arrested and one was reassuring, Mr. Diamond was reassuring Mr. Santa, that they needn't worry, they were stand-up people. Had his response been different, an appropriate course of action might have been taken, and anything that might have been done at that time was within the scope of the conspiracy.

THE COURT: All right, I'll allow it. You have an exception.

Seat the jury.

(Jury enters courtroom and are seated in the jury box.)

THE COURT: The Government is about to offer conversations as allegedly had between this witness and one Stanley Diamond and one Vincent Santa, who the Government claims were members of the conspiracy.

These conversations allegedly were had after March 13, 1975, after the time of the arrest of the defendants.

The defendants position is that these conversations are not admissible because upon arrest, these defendants were not, were no longer members of the conspiracy, but whether or not they continued to be members of the conspiracy is a fact question for you, you'll decide from all of the evidence as to whether they ceased being members of the conspiracy.

The significant results of your determination is this: if they were no longer members of the conspiracy then whatever was between this witness, Diamond and Santa, or what this witness heard going on between Santa and Diamond, if you find Santa or Diamond members of the conspiracy, would in no way bind them, and you can't consider it as part of your determination. You can't base your determination on that.

If you find that the conspiracy was still in existence, and if you find that the defendants knowingly and willfully admitted the conspiracy, then it's a declaration made by a conspirator during the term of the conspiracy and those actions and declarations are chargeable to the accused that you find to have knowingly and willfully entered into the conspiracy. In other words, the conditions upon which actions and declarations outside this hearing, outside the presence of the accused is applicable to the Government proving beyond a reasonable doubt that the conspiracy charge in the indictment existed during this time, that the conspiracy, that the indictment stated existed and the time is from on or about March 10, 1975 to on or about March 19, 1975, and was made in pursuant to the objectives of the conspiracy.

If you find all that present then the accused, you will find knowingly and willfully entered the conspiracy and still were members of the conspiracy at the time the declaration was made and charged him with what was said and done.

Okay, Mr. Corcoran.

BY MR. CORCORAN:

Q I'm not quite sure where I left off, we established I believe, or you testified, Mr. Cogar, that during this period you knew Jimmy Santa, Stanley Diamond and Manny Gomez; is that correct?

A Yes, sir.

Q How often would you see these individuals during that period?

A Every day.

Q What were they doing when you saw them, normally?

A Playing cards.

Q Where?

A In the dress shop or in the card room at Mr. Decandia's house.

Q And your presence there was pursuant to instructions by the agents you were working with?

A Yes, sir.

Q Did you receive any monies for that purpose to be there?

A Yes, sir.

Q What did you do with those monies?

A Gambled with it.

Q You played cards with them?

A Yes, sir.

Q Now, you testified that you saw Jimmy Santa, is that correct, on the 14th of March?

A Yes, sir.

Q And I believe you said Stanley Diamond was there?

A Yes, sir.

Q Would you tell us what they were doing in the dress shop; is that correct?

A Yes, sir.

Q What were they doing there?

A Mr. Santa was reading a newspaper and handed the paper over to Stanley Diamond and said, "What do you think of the rabbis?"

Stanley Diamond said that, "They're stand-up people."

Q Did you have occasion to see that paper that they were looking at?

A Yes. Stanley had his finger on an article which I later looked at. I noticed the headlines of it had to do with the hijacking of Shick Razor Products.

Q Did you have any further conversations with any of those individuals that day?

A Yes, sir.

Q Where?

A At Mr. Decandia's house, the card room.

Q Please speak up, Mr. Cogar?

A At Mr. Decandia's house, in the card room.

Q I show you Government's Exhibit 12 in evidence, and I ask you to look at those photographs, Mr. Cogar: can you identify what's depicted on these photographs?

A Yes, sir.

Q What is it, sir?

A That's the Decandia residence, that's -- it also shows, the far left is 114-29 Lefferts Boulevard where I resided, and the third over would be Mr. Decandia's house.

Q Is that 114-33 Lefferts Boulevard?

A Yes, sir.

Q Is Mr. Decandia known by any other name other than Decandia?

A Tommy Reel.

Q Tommy Reel's place; is that correct?

A Yes, sir.

Q You indicated there was a card room in there?

A Yes, sir, you can see it. It's the garage doors; we had it fixed up, paneled and --

Q Had you been in that card room prior to March 14, 1975?

A Yes, sir.

Q How often had you been in there?

A Almost every day.

Q Had you seen Mr. Santa in there prior to that day?

A Yes,sir.

Q Had you seen Manny Gomez prior to that day?

A Yes, sir.

Q And Stanley Diamond?

A Yes, sir.

Q Now, after you moved over to the Tommy Reel's card room after the Dress Shop conversation, is that correct?

A Yes, sir.

Q What was your purposeof going there?

A To play cards.

Q And did you play cards?

A We did.

Q Did any conversation take place while you were there?

A Yes, sir.

Q Will you tell us what was said and by whom; this is the 14th of March 1975?

A Right. Mr. Santa, when we first went over, Mr. Santa went to use the phone and I asked Stanley Diamond if, I said, "You mean they were really rabbis that the Government arrested?" And he said, "No, they're Orthodox Jews, they wear black hats and beards." You know, that's a description of them.

Q Did you have any further conversations that day with those gentlemen regarding the Shick load?

A Mr. Santa asked Stanley Diamond if he thought that, he asked, well, his words were, "What do you think of," you know, "about it?"

And, Stanley said, "They're tough people, they won't get anything out of them."

Q Calling your attention to March 19, 1975, a few days later, where were you that day?

A Excuse me; what day?

Q March 19th.

A In the morning, in the dress shop.

Q Did you have occasion to play cards that day at Tommy Decandia's?

A Yes, sir.

Q With whom?

A Myself, Stanley Diamond, Jimmy Santa, Manny Gomez and Billy, that's Mr. Santa's brother.

Q Any conversations during that card game?

A Yes. Stanley asked Jimmy Santa if he had got any more money and he said that he was going to see them, the rabbis, on Saturday about getting the rest of the money.

Q That was the Saturday following the 19th?

A Nineteenth, yes.

Q Any further conversations on that day?

A Stanley said that he needed the money to,he needed some money to take to his lawyer in Virginia because he had a case on there.

MR. YOUTT: Objection.

THE COURT: Overruled; I'll allow it.

Q Did therecome a time when Mr. Santa left the room?

A He did.

Q Did you have any conversations at that point; Stanley Diamond?

A Yes, sir.

Q What if anything did Stanley Diamond say?

A Stanley Diamond said that everybody thinks that the Italians have all the money in New York but it was really that the Jewish people had all the money. The money that they had received was brand new one hundred dollar bills with the wrappers that had the Star of David on it.

Q Did he indicate from whom he had received the money he was referring to?

A Yes, he said t[illegible]y that they had gotten from the rabbis and other comments such as, that money was buried and not in banks, money that could never be, you know, shown.

Q Mr. Cogar, I show you Government's Exhibit 7 and 7-A, two photographs, and ask you: look at those photographs, have you seen that which is depicted in those photographs prior to today?

A Yes, sir.

Q Can you identify it?

A This is the first time I saw this, it was on March 12, 1975, we were at Tommy Decandia's house and Manny Gomez asked me to take him to get a car that he had rented, that he had to get back that day.

Q Approximately what time was this on March 12th?

A It was around 11:30 or 12:00 o'clock at night.

Q And where did you take Manny Gomez, if any place?

A I took him to the intersection of 80th Street and 101st Avenue.

Q Did you have any conversation with Mr. Gomez that night, as you were taking him out to that car?

A Yes. He indicated that there would be some money in the ashtray for him and the keys to the car.

Q And did he say for what?

A That they had used the car to pull a $500,000 score.

Q Did he indicate whether he owned that car or not?

A No, that he rented it and he also indicated that he rented it in his own name.

THE COURT: Did you give the address at 80th Street and 101st Avenue?

THE WITNESS: That's right.

THE COURT: Is that Queens?

THE WITNESS: Yes, sir.

Q Did you have any conversation with Mr. Manny Gomez after the 12th about this car -- withdrawn.

Did Mr. Gomez return this car on the night of the 12th?

A No, sir.

Q What happened?

A When, well, when we got there the car was locked. So, he went to, he crossed the intersection when we came down 101st Avenue, we made a lefthand turn onto 80th Street and I pulled up right behind the car. And, we got out and saw that the doors were locked.

So, I went back and sat in my car. He crossed the intersection and went to the third door from the corner and didn't get a response there. While he did that I took down the license plate number to forward to Agent Bratten.

Q So he had obtained no response, he didn't pick up the car that night?

A That's correct.

Q Did you ever take him out to the car on another occasion?

A Yes, sir.

Q How much later?

A I'm not sure. I believe it was the 14th.

Q Did you have any conversation with Manny Gomez that night?

A Yes. He was worried because the car was overdue for return and he had rented it in his own name, and the fact that he stated the fact that it was used on the razor blade job and he wanted to get rid of the car.

Q Did he tell you when it was due back at the rental place?

A Well, on the 12th he indicated it was due back that day.

Q You worked with Agent Bratten and Pissuli at that time; is that correct?

A Yes, sir.

Q Did you know an individual by the name of Paul Pollari at the time?

A I knew him as Paul, that's it.

Q Had you seen him around the Lefferts Dress Shop?

A Yes, sir.

Q Tommy Reel's?

A No, sir, but in the area, at Roberts Lounge.

Q And were you aware that Mr. Pollari was an informant of the FBI at the time?

A No, sir.

Q Did you ever make it known to him that you were an informant for Agent Pissuli and Bratten?

A No, sir.

Q Did you ever discuss this case with Mr. Pollari at any time?

A No, sir.

MR. CORCORAN: Thank you, I have no further questions at this time.

* * *

THE COURT: Mr. Youtt?

MR. YOUTT: Your Honor, I would like some time to review documents that I have just received.

THE COURT: We will take a short recess.

(Recess taken.)

THE COURT: Seat the jury, please.

(The jury is in the jury box.)

THE COURT: Mr. Youtt?

MR. YOUTT: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. YOUTT:

Q Mr. Cogar, you testified on direct examination that you were an informant for the various Government agencies, commencing sometime in 1974; is that correct?

A Yes, sir.

Q When in 1974?

A July.

Q And that terminated sometime in May 1975?

A Yes, May 30th, 1975.

Q Between July 9th, 1974 and May of 1975, did you, did that occupation take up most of your time?

A A good part of my time, yes sir.

Q Were you employed during that period of time in any other job?

A No sir.

Q Were you paid enough during that period of time to live?

A I was receiving unemployment benefits as well, and I was earning money with some defendants on the other cases.

Q So when you say you were earning money with some defendants, you're talking not about anybody you see in the Courtroom today, are you?

A Correct, sir.

Q Who were you earning money with during that period?

A Vincent, Jimmy Santa, Stanley Diamond, my father, Lou Zita, all people in this Leffert's Dress Shop and Robert's Lounge.

Q And what type of things were you doing?

THE COURT: Did the jury hear that; did the back row hear the testimony?

All right. I'm having trouble, you've got better ears than I have.

Q What type of employment were you engaged in with these individuals during that period of time?

A Specifically unloading hijacked trucks and disposing of goods.

Cogar -cross

Q So you were unloading hijacked goods and being paid for that task during the period of time that you were also an informant; is that correct?

A Yes sir.

Q Okay. Now, during the time that you were an informant, do you remember, were you paid a certain amount of money every month?

A No, sir.

Q Were you paid after you provided information?

A Yes, sir.

Q If you provided information that the Government officials or agents that were dealing with you didn't really need or want, did they pay you anyway?

A Yes, sir. To attend these card games, I wasn't too successful a gambler and usually I lost the money, but I gathered a lot of intelligence information by attending these card games.

THE COURT: Before you turned informant, were you faced with any charge, either federal or state?

THE WITNESS: Yes, sir.

THE COURT: And was that the reason you turned informant?

THE WITNESS: Yes, sir.

THE COURT: What were you charged with at the time?

THE WITNESS: It had to do with credit cards, I'm not sure of the exact charge. There was credit cards that were removed from the mail and we purchased them and used them.

THE COURT: Was this over a long period of time?

THE WITNESS: Yes, sir.

THE COURT: So, you were facing heavy penalties when you decided to turn informant?

THE WITNESS: Well, my co-defendant, whatever, received a three-year sentence for this.

THE COURT: All right.

Q And, I take it that you were -- let's go back to the beginning, and the beginning of your informant status or just before that.

I take it that you were arrested and charged with the credit card offenses sometime immediately before you became an informant; is that correct?

A No, sir.

Q When were you arrested and charged with the credit card offense?

A Never.

Q Were you apprehended in connection with the credit card offense?

A No, sir. I was subpoenaed and asked to give them a handwriting specimen.

Q And at the point when you were subpoenaed, that was a Grand Jury subpoena?

A No, sir.

Q Was it an FBI subpoena?

A It was Eastern District Strike Force.

(Continued next page.)

Q Were you called to an office of the Eastern District Strike Force?

A Yes, Postal Inspector Renculli.

Q Did you meet any Assistant United States Attorneys at that time?

A Yes, sir.

Q And was it at that time when you were called into the office that you made the decision to become an informant for the Federal Postal Authority and the US Customs Agent?

A I indicated that at that time I would consider it, and I was subsequently, I was subpoenaed again.

Q Now, when was that first occasion when you came into this Strike Force Office?

A I'm not sure.

Q Was it several months before July, 1974?

A No, sir, both times it was in July. First time early in July and then second time towards the end of the month.

Q Were two of your subpoenaes issued then within a month?

A Yes, sir.

Q And on each of those occasion, did you give handwriting samples?

A No, sir.

Q Did you have a lawyer at that time?

A No sir. I called the lawyer the first time and the second time I agreed to cooperate, therefore, I did out the handwriting on the second occasion.

Q On the second occasion is when you agreed to cooperate; is that correct?

A Yes, sir.

Q Would that be in July of 1974?

A Yes, sir.

Q Would that be in July of 1974?

A Yes, sir.

Q Now, what did you understand you were supposed to do as an informant, in order to provide cooperation necessar in connection with your, with the credit card offense?

A In other words, not to avoid prosecution, what was expected of me?

Q Let me withdraw that and I'll put another couple of questions to you and it will come out more clearly.

Were you told that if you provided cooperation, charges against you would not be brought?

A Right.

Q And that you would never have to face a criminal penalty for the credit card offense that you outlined?

A Yes, sir.

Q And were you told, what exactly you had to do, in order to avoid charges being brought against you?

A Exactly that, just to provide information about the origin of the credit card, use, where they were used, where the merchandise was disposed of that was purchased with these credit cards. It was entirely concerned with just that case.

Q And did you provide that information?

A I did.

Q Were you paid any money for that information?

A No, sir.

Q How long did it take you to provide that information to the satisfaction of the authorities with whom you were dealing?

A Approximately two hours. I made a tape and --

Q A tape recording, you say?

A Yes, sir.

Q And after those hours, were you told that you might have to be a witness in a case that might come out of the information you provided?

A On another case, I'm not sure exactly when, but it wasn't too long. I was told that if the defendant took to trial, I would have to be produced as a witness.

Q Did you understand that prior to giving that information, you might have to be a witness?

A Well, I knew -- yes, sir.

Q Did you ever testify in a trial arising out of that particular case?

A No,he pleaded guilty.

Q Now, after that two hour session, were you told that you would not be prosecuted, that you had fulfilled your end of the bargain?

A Yes, sir, but -- all right.

Q Did there come a time when Agents of the United States Government asked you to be an informant in another capacity and provide additional information about something else?

A I don't think you want me to answer that.

Q Did you become an informant in any other matter after you provided the information?

A Yes, I did.

Q Did you continue to be an informant during the period of time of year in other matters, additional to the information concerning the credit card offense?

A Could you read that back?

MR. YOUTT: I'll ask it again.

THE WITNESS: I didn't catch the first part.

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Q You continued to be an informant in cases which didn't have any relation at all to the credit card offense; is that correct?

A Yes.

Q After July, 1974?

A Right.

Q Now, what was your reason for doing so; my question is, either we offered money to do it or were you offered some other sort of leniency in other charges to be brought against you?

A I didn't have any other charges.

THE COURT: You didn't unload hijacked trucks, did you?

THE WITNESS: After that, at the time the credit card was all I was facing, and then it goes into that area, yes sir.

THE COURT: Well, were you still an informant when you were unloading the trucks, hijacked trucks?

THE WITNESS: Yes.

THE COURT: Were you doing that on behalf of the Government or was a sideline with you?

THE WITNESS: No, that was -- I was cooperating at the time.

THE COURT: I see, and you were reporting the activities to the Government?

THE WITNESS: Yes sir, but he asked me --

THE COURT: Were you getting paid for it from the hijackers, right?

THE WITNESS: Right.

THE COURT: For unloading, and were you getting paid from the Government for giving the information?

THE WITNESS: Yes, sir.

THE COURT: All right, now we have it, I think.

THE WITNESS: But the question was, after the credit card did I continue to become an informant, but it would have to go into the area as to the reasons why.

THE COURT: Did you discuss the question why?

THE WITNESS: The question was, was I facing charges.

Q First of all, you understand the question, were you facing charges and you answered, no. The second question was were you offered money to do, to continue to be an informant after you were assured that the charges on the credit card business would be dropped and --

A That's what I said goes into the area --

THE COURT: And you don't -- you think the jury ought to be excused?

THE WITNESS: Yes, sir.

THE COURT: All right, the jury may be excused.

(Indicating the jury was excused.)

THE COURT: I assume you believe that the answer before the jury might unfairly prejudice the defendant?

THE WITNESS: Yes.

THE COURT: All right, we'll have the answer outside of the hearing of the jury.

THE WITNESS: The person that's involved with the credit card when I gave him up, put my life in jeopardy, so therefore, it was imminent that I would have to be relocated as a witness. They didn't know that he was going to cop out as far as there was all indications he was going to trial, therefore, until this information was turned over, I took on the capacity of an informant because there is certain things that sometimes occur which don't occur.

THE COURT: You feel --

THE WITNESS: Like recovery fees.

THE COURT: You believe your life is in danger?

THE WITNESS: The Government did, yes, Yes sir.

THE COURT: But then wouldn't it be a greater risk then acting as a helper unloading hijacked trucks?

THE WITNESS: Yes, sir, but until material was turned over — in other words, I had confidence in the authorities that they weren't going to give me up, nobody knew that I had cooperated on the credit card.

THECOURT: When you say because of the informatio that you gave on the credit card, your life is in jeopardy?

THE WITNESS: Right.

THE COURT: Wasn't it still in danger when you cooperated with the Government in turning over information on the hijacking of the trucks?

THE WITNESS: I see. Well, I gave the informatio but the man was not immediately arrested or indicted or anything.

THE COURT: So your roll was not revealed?

THE WITNESS: It was well run in the STrike Force office.

THE COURT: No one knew you were an informant?

THE WITNESS: Right.

THE COURT: Then the question was, you felt, or why did you continue and you're saying that you continued because since you had acted as an informant, you felt you weresecure in continuing to do it?

THE WITNESS: Right, because evidentally I would have to be relocated when the credit card case came to trial, the point was brought up that I was an informant and my life would be in danger, and I would have to be relocated.

THE COURT: You have the information, Mr. Youtt if you want to, you can ask leading questions so that the witness is not testifying about his life being threatened.

MR. CORCORAN: I ask for the instruction to the jury as to the witness having been told not to answer certain questions; they may have gathered the impression before that he refused to answer questions, when your Honor was talking, Mr. Youtt asked the question and witness indicated, "I don't think you want the answer".

THE COURT: All right, I don't think the jury is that naive, Mr. Corcoran, but if you will sleep a little better, I'll tell them that his reluctance to answer a question was not a refusal.

Seat the jury.

(Jury back in jury box.)

THE COURT: The witness didn't refuse to answer a question, he didn't know whether he should answer the question and that's why he turned to the Court for instructions, and he got his instructions,

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so I think we're cleared away now.

MR. CORCORAN: Thank you.

Q Mr. , after you provided the initial information about the credit cards, were you told that if you continued to provide information as an informant that you would be paid money by the Government?

A Not in them terms.

Q Were you told that you would be compensated in any way with money?

A Well, there is a procedure that in some instances where you recover a load, the informant receives a reward from the insurance company.

Q Were there occasions when you received an award from insurance companies during that year of 1974, from July to May, 1975?

A No; it was turned down.

Q When you say "It was turned down," turned down by the insurance company?

A Yes.

Q Did you provide information to the Government as an informer in all cases in which you participated in as a loader in hijacked matter?

A Yes.

Q Now, On those occasions did the Government know, did you tell the agents of the Government that you were receiving money for your roll as a loader?

A Yes, sir.

Q Did the Government, did agents of the Government provide you with any money in return for information which you provided concerning the loading operations in which you worked; the Government, not the insurance company?

A Yes, sir.

Q Did they, the Government pay you -- strike that.

When you gave information to the Government, would you do it to a specific individual or would you just come in to the Government office?

A Specific individuals.

Q Who was that individual?

A Postal Inspector Renculli and Special Agent Gratt. Customs Agent.

Q Did you work more frequently with one of those individuals than the other, or about even, or how was that?

A Longer with the postal-inspector, and where on cases involving Customs, equally from that point on.

Q Well, I take it the hijack cases that you worked on involved the hijacking of postal trucks?

A No, sir, it was air shipments.

Q Air shipments of air mail?

A No.

Q Well then, that must have been International air shipments; is that right?

A International.

Q I mean from different countries so that customs would be involved?

A Yes, sir.

Q And those international shipments were the ones in which you contacted the Customs Agent, correct?

A Yes, sir.

Q And I take it the postal agent?

A Excuse me. I contacted the postal inspector who realized, I didn't differentiate, he realized it was a Customs matter and he brought it to this Customs agent in to it, introduced him to me and then we proceeded from there.

Q Well, did you unload any hijacked trucks that didn't involve international shipments, to your knowledge?

A No, sir.

Q Did you ever have contact with FBI agents during the period of your being an informant?

A No, sir.

Q When you provided information to either of the two agents with whom you dealt, did they immediately give you monies at the time you provided the information?

A Not always.

Q Sometimes they would give you money and sometimes they would not?

A Right.

Q When they gave you money, did they always give you the same amount of money?

A No, sir. It was when I indicated that I needed some money.

Q So they paid you what, expenses?

A Not always expenses, just informant fees.

THE COURT: Could you approximate the total amount you received; was it $500 or $10,000?

THE WITNESS: It was close to $2500.

THE COURT: ABout that?

THE WITNESS: Yes, sir.

Q When they gave you money -- when you went in to provide information, did you ask for money in advance or did you just ask for that as a kind of an aside after providing information?

A I indicated that I needed some money and they provided it.

Q Did the amount of money they gave you depend upon the type of information you gave them?

A I imagine sometimes it must have, you know, because the amounts varied.

Q Well, didn't you realize that the better the information that you gave them the more money you would get?

A That sounds logical.

Q When you were providing information to — well, strike that. Were you also given money to become, for purposes of spending in connection with things that the Government agent asked you to do?

A Such as?

Q You mentioned card games; it's conceivable to me that a Government agent would say to you, "Why don't you get yourself into a card game and find out some information", and you might say to him, "I don't have any money to get into a card game and I need some expense money to bankroll me".

Did something like that happen on any occasion?

A Well, to bring a point forward, the card games occurred everyday. I felt that I couldn't be present on a daily basis and not make, as I stated, I was unemployed and married at the time, and I was just receiving unemployment, so I felt that I shouldn't have to use that money to sit there and gather information.

The Government provided with money to enter into these card games, so as to not cast the suspicion on myself.

Q You say you weren't too lucky in the card games;

can you estimate the average day, how much money you would lose in one of those card games?

A Estimate it?

Q Well, if you can remember specifically I'd appreciate that?

A Sometimes I wouldn't, sometimes I lost you know, but most of the time I lost.

Q How much would you lose in an afternoon?

A $50 to $300.

Q How frequently would you be in these games during the period you were an informer?

A Almost everyday.

Q Did you use all of the money that the Government gave you for card games?

A No, sir.

Q In the card games?

A No, sir.

Q What else did you use that money for?

A I used some of it to purchase drugs.

Q What kind of drugs?

A Heroin.

Q Did you use heroin at the time?

A Yes, sir.

Q Were you addicted to heroin?

A Yes, sir.

Q When did your addiction begin?

A I'm not sure, --

Q Are you presently addicted to heroin?

A No, sir.

Q Were you using heroin -- strike that. AT the time March of 1975, can you tell us about how much your heroi habit cost you every day?

A In March of '75 I wasn't addicted.

Q Were you using heroin at all in March of 1975?

A Yes.

Q How much would you spend on the average?

A I couldn't say, because it was sporadic.

Q Did you become addicted after March of 1975?

A No, prior.

Q When did your addiction cease?

A I couldn't be sure. I never stopped using, but I wasn't, I didn't have the dependence.

Q When you did have the dependence, how much did that dependence cost you everyday?

A The highest it was was $120 a day.

Q And about when was that; if you recall?

A December, January.

Q December, January, '74 and '75?

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A Yes.

Q And then afterwards, I take it that you decided to taper off; is that your testimony?

A Yes, sir. I started using methodone instead to come down.

Q And so, in March you were in the process of coming down from heroin?

A No, I was -- well, yes.

Q Now, while you were acting as an informer for the Government, did you tell any Government agent that you were addicted to heroin?

A No, sir.

Q When did the Government agents learn that fact?

A May 30, 1975.

Q That was when you terminated your informant status; is that correct?

A Well, I was arrested.

Q You were arrested on May 30th?

A On State charges.

Q And those are the State charges for which you now are incarcerated?

A No, sir.

Q There are other State charges?

A Yes, sir.

Q What was the nature of those charges?

A Burlary.

Q And what was the disposition of that case?

A I pleaded guilty to a burglary, and received time served.

Q Credit for time served?

A Yes, sir.

Q Did you spend sometime in jail then, between your arrest and your conviction?

A Yes, sir.

Q How much time were you in jail on that particular occasion?

A Six months.

Q And now, in connection with that offense, did any agent of the Government, to your knowledge, make any contact with any state official in connection with providing information about you?

A I cooperated with the state official at that time.

Q Do you know whether the state official, including possibly the state prosecutor, District Attorney and other than the judge, were made aware of your cooperation with the Federal Government?

A I believe there was -- they were, yes.

Q Do you know how that took place?

A Assistant United States Attorney Richard Gregory from New York wrote a letter advising them of my cooperation with the Government.

Q During the time that you acted as an informant were there any other cases in which you were arrested, in which agents of the United States Government provided information about your informant status?

A No, sir.

Q Were there any other cases in which you were subpoenaed or in any way come before a state or Federal agency, in which agents of the Government provided information about your informant status?

A No, sir.

Q Did you request the assistance of the United States Attorney to provide the letter to the state official in connection with your burglary offense?

A No, sir.

Q You did not request it?

A No, sir.

Q Did you make the facts of your arrest on those state charges known to your agent, contact in the United States Government?

A You mean the postal inspector and such?

Q Yes.

A Yes.

Q Who was it, which of the two of them, or maybe it was both?

A Well, this was in Dutchess County and the sheriff came before me at five minutes to twelve and the Customs agent was at my house at 12:00 o'clock, so he was present as they arrested me.

Q How long before 12:00 o'clock did you call the Customs agent to inform him of that fact?

A He was on his way up to see me anyway.

Q Did the Customs agent, that's Agent Grattin?

A Yes, sir.

Q Did he say anything about you with respect to what the Government of the United States would do in your behalf in connection with the state charges?

A He made certain conditions available in the County jail at Dutchess Count, made certain things known to the sheriff.

Q Did he tell you that he would write the letter to the officials of the state, to the state officials telling them about your cooperation with the Federal Government, over the period 1974-1975?

A No, sir.

Q When did you enter your plea of guilty on the state charge of burglary?

A I believe it was August 8th, 1975.

Q August 8, 1975, all right.

Thereafter, on or about September 19, 1975, did you have occasion to be interviewed by Agent Dowd or Pecoraro in connection with this case?

A What case was that?

Q Of the Federal Bureau of Investigation?

A I had occasion to be interviewed by them, but I'm not sure what date it was.

Q But I take it it was sometime soon after you were released from state custody; is that correct?

A Yes, sir.

Q When were you released form state custody in connection with the burglary offense?

A It was either August 14th or August 20th, 1975.

Q During the time that you were incarcerated on the state offense for burglary or pending the coming trial which you ultimately pled guilty, were you visited by Agent Grattin of the US Customs?

A Yes.

Q On how many occasions?

A I believe it was twice.

Q Were you visited by the postal inspector during your incarceration?

A Yes, sir.

Q How many occasions?

A On the same occasion.

Q Prior to your being released from state custody, have you ever been interviewed by Agent Dowd or AGent Pecoraro, the special agents of the Federal Bureau of Investigation, in connection with this case?

A I don't recall, but I don't think so.

Q When did you first -- well, which of the two agents that you were dealing with at the time did you first speak with concerning the subject matter of your testimony here today?

A Of which agents?

Q Well, I don't know, which one was it?

A Of Renculli, Grattin, Pecoraro or Dowd?

Q Well, you don't have a recollection of speaking with Special Agent Dowd or Pecoraro before September, 1975; correct?

A Correct.

Q Now, this event occurred in March of 1975. My question to you, let's start the question: Did you speak with anyone else before September of 1975, any other Government agents concerning this particular matter?

A Agent Grattin and Agent Renculli.

(Continued on next page)

Q And when, if you recall when did you first speak with these agents about this matter?

A On a daily basis from July of '74.

Q Well, you couldn't have -- When I'm talking about this matter, I'm representing to you that it occurred in March of 1975. When did you first speak with either Agent Gratter or Rinsulle on this matter?

A I'd say it would be the 13th of March.

Q You testified here with respect to conversations which you had on the 14th, and the 19th of March. When did you first speak to the agents about those particular conditions, I'm not going to pin you to a specific date, I'd like to get your best recollection?

A Well, as I stated, daily, every day I usually call them in the morning, but I often had occasions to speak with Inspector Rinsulle at home in the evening, if I couldn't reach him at his office.

Q Were you paid any money for the information which you provided concerning this case?

A I couldn't swear to it.

Q By that answer, do you mean that you don't recall?

A That, I don't recall money specifically for this case?

Q That's right.

A As I stated, I was over a period of time, it came in staggered amounts, different amounts, different times and this case was just one of many.

Q I take it that you weren't sent checks by the United States Government?

A No, it was cash.

Q And the cash was handed to you by the agents with whom you were dealing?

A That's correct, that's right.

Q Are you saying sometimes you would be paid several days or several weeks after you've provided information to these same agents by that agent?

A Well, I constantly provided them with information.

Q And they constantly provided you with money; is that correct?

A No, not constantly, but every once in a while.

Q Were you, in connection with the card games that you testified about, were you paid money by the Government to get into those specific card games or to be in the location in which you just testified about here today?

A Yes, sir.

Q Were you told by any Government agent to go to the card games on that specific day?

A I wasn't told to go to them. I was in the area, I was going to them but I wouldn't have been able to go as often and participated without this money.

Q Were you paid any money for assisting, I believe you testified Mr. Gomez deliver a car to a rental agency?

A I don't remember testifying that I helped him to deliver a car to a rental agency.

Q Didn't you say something you were driving, to take him to a car or something like that?

A Yes. I drove him to pick up a car that he indicated that he had to return to a rental agency.

Q Were you paid any money by Mr. Gomez or anyone for that act?

A No, sir.

MR. YOUTT: May I just have a moment, your Honor? I have no further questions at this time.

THE COURT: Mr. Corcoran?

MR. CORCORAN: Just a few, your Honor.

REDIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Cogar, you testified that you began cooperating with the Government, or began an informant status in September of '74?

A July.

Q July of '74?

A Yes, sir.

Q And prior to that date, you had been involved in the credit card scheme; is that correct?

A Yes, sir.

Q And that as a result of your involvement in the credit card scheme, you were approached by the Government agents?

A Yes, sir.

Q You had been in quite a bit of trouble in your life, haven't you, Mr. Cogar?

A Yes, sir.

Q You have been in trouble since that time, since you began cooperating with the Government; is that correct?

A Yes, sir.

Q Burglarly up in Dutchess County was one?

A Yes, sir.

Q When did that take place?

A It took place -- I was arrested May 3rd, two days, the 28th.

Q The time that burglary took place, your status as an informant for the Government terminated; isn't that correct?

A Yes, sir.

Q And you have been in trouble since then?

A Yes, sir.

Q You have recently been arrested for another burglarly?

A Yes, sir.

Q Isn't it also true that the Government agent in charge at some time in the last year, you had contact with an undercover agent, and offered to sell some sawed-off shot guns?

A Yes, sir.

Q And you haven't been charged with that as yet, have you?

A No, sir.

Q Have any promises been made to you with regards to that charge?

A No, sir.

Q That remains outstanding?

A Oh, I answered no, yes, sir, but I never was arrested for that.

Q There are no charges pending?

A As far as I know.

Q But you know the allegation was made?

A I read it in a newspaper.

Q Have you been in any other trouble since July of '74?

A July of '74?

Q That's right, besides the burglary in Dutchess and the burglary recently, and the allegations that you sold or offered to sell some arms, have you been involved in any other criminal activity that you did not report to the agents, Rinsulle and Gratten?

A No, sir.

Q And you indicated as a result of the credit card scheme in July of '74, -- Did the agent ask you to move into that neighborhood on Lefferts Blvd. or were you already living there?

A I was already living there.

Q Where were you living when the agents first contacted you?

A When the agents first contacted me?

Q Yes.

A I was in, located, I was in Arthur Kill Rehabilitation Center, a drug center.

Q What was your residence at that time?

A 114-29 Lefferts Blvd.

Q And who did you live with at the time?

A My father in-law and wife.

Q Who is he?

A Jerome Zitta.

Q And that's located near the Robert's Lounge; is that correct?

A Yes, sir.

Q Would you describe what Robert's Lounge is?

A Well, Robert's Lounge originally was a bar named Robert's Lounge, with a social club underneath and apartments above. The lounge, the Robert's Lounge itself was closed down but it's still referred to as Robert's Lounge.

Q Did the individuals who were hijacking these trucks that you were unloading during this period frequent Robert's Lounge?

A Yes, some lived there in the apartments above, and that's where they used to play cards.

Q And these individuals were involved in hijacking trucks before July of '74?

A Yes.

Q And you knew them to be doing it; is that correct?

A Yes, sir.

Q Jimmy Santa?

A Yes, sir.

Q Stanley Diamond?

A Yes, sir.

MR. YOUTT: Objection, your Honor.

THE COURT: I'll allow it.

Q Were you playing cards in Tommy Reel's prior to July of '74, before the agents contacted you?

A No, sir.

Q You associated with those individuals and played cards there prior to July of '74?

A Yes, sir.

Q And you agreed to gather information for the agents and report to them; is that correct?

A Yes, sir.

Q And you did that on a daily basis?

A Yes, sir.

Q When you received these money payments for your work as an informant, was it related to any specific piece of information?

A Oh, not really, because some information they could use, some they couldn't.

Q But did they say, "Here's a hundred for this information", or did they just give you money?

They would just hand me money. I signed for it.

Q Now, you testified earlier, Mr. Cogar, that it was March the 12th, 1975 that Mannie Gomez asked you to take him out to the car that is depicted in Government's Exhibit 7; is that correct?

A Yes, sir.

Q How do you know it was March 12th -- Withdrawn. Mr. Gomez told you that the car had to be back that day; is that correct?

A Yes, sir.

Q And he told you, you said earlier, that that car had been used in a $500,000 score; is that correct?

A Yes.

Q And you testified earlier that you took down the license plate that night; is that correct?

A Yes, sir.

Q When did you give that information to the Government agent, to Gratten?

A The next morning, the 13th.

Q The 13th?

A Yes, sir.

Q Did you receive any money for giving him that information?

A No, sir.

Q Did you tell him that the car had been used in a score?

A Yes, sir.

Q Did you know what score it had been used in when you related that fact to Agent Gratten on the 13th?

A No, sir.

Q Did you know about the Schick hijacking at that time?

A 13th, no, sir.

Q Did Agent Gratten pay you money for that information?

A No, sir, I gave the information on the phone.

Q Did you relate to Agent Gratten on the 14th, the information that Jimmy Santa asked Stanley Diamond, "What about the rabbis?"

A Yes, sir.

Q Did you relate to Agent Gratten on the 14th, the information that that very day Mr. Diamond said to Mr. Santa, "Don't worry, they're standup guys"?

A Yes, sir.

Q Told him on the 14th?

A Yes, sir.

Q Did he give you any money for it?

A No, sir.

Q Did you relate to Agent Gratten on the 19th of March, the fact that Mr. Diamond said they had gotten 100 dollar bills with wrappers bearing the Star of David from the rabbis?

A I'm not sure of the exact date.

Q Did you tell him the date you heard it?

A Yes, sir.

Q Did he give you any money for that, that day?

A No, sir.

Q Did you tell him on that day, the 19th of March, 1975, that Jimmy Santa said he was going to meet with the rabbis the coming Saturday, and get the rest of the money on that Schick load?

A Yes, sir.

Q You told him the day you heard him?

A Yes, sir.

Q Did you get any money for that information that day?

A No, sir.

Q The fact is you reported to the agent everything you heard on a daily basis; is that correct, sir?

A Yes, sir.

Q With regards to this case and other cases that you know of during that period, July of 1974 to

May of 1975?

A Yes, sir.

Q You unloaded the hijack trucks, the trucks that you unloaded was for the purposes of informing the Government about them; is that correct?

A Yes, sir.

Q You weren't unloading them, sir, with criminal intent?

A No, sir.

MR. CORCORAN: Thank you, I have no further questions.

MR. YOUTT: I have a couple of further questions, your Honor. Thank you.

RECROSS EXAMINATION

BY MR. YOUTT:

Q Mr. Cogar, in connection with the information which you provided in this case, do you know whether any claim or request was made of by an insurance company to receive a reward on your behalf?

A For this?

Q Yes.

A No, sir.

Q You don't know of any; is that correct?

A No, sir.

Q You didn't receive any money from the insurance company?

A No, sir.

Q This other area which Mr. Corcoran brought up on his redirect of the sawed-off shot gun sale, do you know when it's alleged that you had something to do with that, when the offense allegedly occurred?

A Well, I was arrested in the burglarly

Q That would be May of 1976?

A 5, 1975.

Q I'm sorry, yes?

A And I'm not sure, during my incarceration another inmate showed me a newspaper article that said I was arrested. I never was approached by anybody, I was never charged or arraigned, indicted to my knowledge on the matter.

Q And where did that newspaper article say you had been selling sawed-off shot guns?

A In the Poughkeepsie Journal.

Q Where was the location of the actual selling of the shot guns, according to the article?

A It didn't state.

Q Did you show that article, or did you convey the information from that article to one of the agent's contacts in the United States Government?

A Yes.

Q Whom?

A I'm not sure who.

Q What was said by you and what was said by the agent in that conversation?

A I don't remember.

Q Do you remember whether the agent said he would do anything about that particular allegation; you can answer just yes or no?

A No, I don't quite understand. Like, I know I discussed it and I was told that they couldn't make no promise, that it would be up to the Assistant U.S. Attorne that was prosecuting the case, because there was other defendants of which I had no knowledge of, any of the other defendants.

Q And as far as you know, nothing ever came of that allegation?

A That's correct.

Q And you saw that newspaper sometime in December of 1975?

A Say December.

Q Some time in December of 1975?

A That's correct.

Q Now, with respect to the state offenses which you are presently incarcerated, you testified I think at the outset of your direct testimony, that you, that no, well, has the United States Government done anything in connection with your present incarceration; have they given -- Let me withdraw that?

Has the Government written a letter of any kind to state officials requesting that you be treated with leniency?

A No.

Q Have they promised to write any such letter as a result of your testimony in this case?

A Not this testimony, words -- They said they would bring to light my cooperation with the Government.

MR. YOUTT: Thank you, that's all.

THE COURT: Anything further, Mr. Corcoran?

MR. CORCORAN: No, sir.

THE COURT: You may step down. Next witness.

MR. CORCORAN: The Government calls Joseph Smith.

THE COURT: Is he in the witness room?

MR. CORCORAN: I believe he is outside, your Honor.

JOSEPH SMITH, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please state your name and spell it, for the record.

THE WITNESS: Joseph P. Smith, S-M-I-T-H.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Smith, by whom are you employed?

A The Federal Bureau of Investigation, the FBI of the New York City office.

Q And how long have you been with the FBI?

A Approximately seven and a half years.

Q And you're a special agent?

A That's correct.

Q Assigned to any particular squad?

A Yes. I'm assigned to what is known as the truck hijacking squad, the truck investigation theft from interstate shipments, as they relate to truck hijacking and other related matters.

Q Calling your attention to February 5, 1975, did you have occasion to execute a search warrant at the CBS Warehouse, 50th Street and 1st Avenue in Brooklyn?

A I did.

Q What, if anything, were you looking for?

A We were looking for a quantity of Whitehall Laboratory products, among them Anacin and Anacin products, primarily; there were other Whitehall products that we were looking for.

Q And did you find Whitehall products that you were looking for?

A We did. We found a sizable quantity, the exact breakdown I can't recall offhand.

Q Is there anything that would aid your memory in determining what you found there that day?

A Yes, there is. Routinely, I recorded the search and the results of the search on what is known as an FD 302.

THE CLERK: Document marked Government's Exhibit 25 for identification.

Q I show you what's been marked as Government's Exhibit 25 for identification, and ask you: Can you identify the document?

A Yes. This is a copy of the 302 which I transcribed subsequent to the execution of the search warrant.

Q And does that document refresh your recollection as to the quantity of goods taken from the CBS

Warehouse by you and other agents of the FBI, on February 5, 1975?

A It does.

MR. CORCORAN: Mr. Youtt, do you have any objection to using the document for purposes relating to the Whitehall products which were moved?

MR. YOUTT: No.

Q Could you tell us what products were removed on February 5, 1975?

A We removed 100 cases of what are known as Anacin 12's, 108 cases of Anacin 30's, 192 cases of Anacin 50's, I believe, as I recall they pertained to the amount of Anacin in each bottle, or the quantity packed in each carton.

We also removed 192 cases of Neet, Aerosol, 192 cases of Neet Lemon, 240 cases of Preparation H suppositories, 12's, and 160 cases of Preparation H suppositories, 24's.

Q Agent Smith, have you had occasion to examine here in the Courtroom today, the cartons Government's Exhibits 17, 18 and 19?

A Yes, sir.

Q Have you seen these cartons?

A Yes, before, yes.

Q When?

A On February the 5th, those are some of the cartons which we seized from CBS Warehouse. I recognize them by examining them, they bear my initials and date.

Q And what did you do with the remaining cartons other than those three?

A Those were returned to the truckman, designated by Whitehall Laboratories, who picked them up at CBS Warehouse on February 5, 1975.

MR. CORCORAN: Thank you, sir. I have no further questions.

THE COURT: Mr. Youtt?

MR. CORCORAN: I offer as Government's Exhibit 25, for evidence for reference purpose.

MR. YOUTT: No objection to the exhibit, and no questions, your Honor.

THE CLERK: Government's Exhibit 25, previously marked for identification now marked in evidence.

THE COURT: You're excused.

MR. YOUTT: I do have one or two questions, if I may, your Honor, I'm sorry.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. YOUTT:

Q Agent Smith, when you testified that you executed a search warrant, was that something which you obtained, to your knowledge, after other federal agents had arrived at the premises, the CBS Warehouse?

A Yes, it is.

Q And is the obtaining of the search warrant under those circumstances something which is done even in situations of cooperation, in order to justify your taking goods from a warehouse?

MR. CORCORAN: I'll object to that, your Honor.

THE COURT: Can you answer that question?

THE WITNESS: I, yes and no. I can relate an explanation as to why we did it that way, if that would --

THE COURT: That's not the question though.

THE WITNESS: I'm sorry.

THE COURT: Objection sustained to the question, the witness can't answer it in the form presented.

Q As far as you know, the search warrant was prepared and executed after an initial visit had been made by an agent other than yourself, to the premises of the CBS Warehouse?

A I believe that is correct, yes, sir.

MR. YOUTT: Fine, I have no further questions.

THE COURT: Anything further?

MR. CORCORAN: Nothing.

THE COURT: You may step down.

Next witness?

MR. CORCORAN: The Government calls Mr. Devine.

HARRY DEVINE, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Would you state your name and spell it for the record, please?

THE WITNESS: Harry Devine, D-E-V-I-N-E.

THE CLERK: Two page document marked Government's Exhibit 26 for identification, and a one-page document marked Government's Exhibit 27 for identification.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Devine, by whom are you employed?

A Whitehall Laboratories, Division of American

Home Products Corporation.

Q And in what capacity were you employed by Whitehall Labs?

A As general traffic and warehouse manager.

Q How long have you been in that position?

A Six years, a little better than six years.

Q Mr. Devine, I show you what's been marked as Government's Exhibit 26 for identification, and ask you: If you can identify that document?

A Yes, sir, I can.

Q What is it, sir?

A It would be a copy of what we call a stock transfer manifest.

Q What does a stock transfer manifest represent?

A It would be a listing of material sent or shipped from one plant or warehouse facility to another.

Q And does that particular copy of it refer to a shipment of goods from your company?

A Yes, it does.

Q What shipment of goods does it pertain to?

A A movement of stock from our Hammonton, New Jersey Plant to our Dallas, Texas warehouse.

Q And what was the date of that movement and how were those goods moved?

A It was shipped on January 30, 1975 via National Farm Lines.

Q January 30, '75?

A That's correct, sir.

Q And what was contained on the shipment?

A It was a shipment of 2,250 cases, 36,804 pounds of various proprietary drugs and toilet preparations.

Q And did that shipment reach Dallas, Texas?

A No, it did not.

Q I show you what's been marked as Government's Exhibit 27 for identification, and ask you: If youcan identify that document, sir?

A Yes, I can.

Q What is that, sir?

A That is a receiving report.

Q And what does that particular receiving report indicate?

A It's a, reflects a return of a part of a stock transfer, originally consigned to the Dallas, Texas warehouse and our Hammonton, New Jersey plant.

Q Does that, in fact, indicate goods returned to you that were originally shipped out on January 30, 1975?

A That's correct.

Q The same goods that are represented on Government's Exhibit 26?

A Yes, sir.

Q Went out by truck to Dallas, Texas?

A That's correct.

Q By whom were the goods returned to Whitehall Labs?

A Laurelhill Trucking Company.

Q And from whom did they receive the goods?

A Agents of the Federal Bureau of Investigation.

Q That was returned on what date, sir?

A This indicates a receipt of February 6, 1975.

(Continued on next page.)

Q What did you receive from the FBI on that date, according to the receipt?

A It isn't totalled, but quite a number of cases of these various proprietary drugs and toilet preparations. Do you want me to read it off?

Q Please.

A Okay. Ninety-nine cases of our code 0205, Anacin twelve. One hundred seven cases, our code 0225, Anacin thirties, date code, 1A523, 1A524. One hundred ninety-one cases our code 0235, Anacin fifties, code 1A528 an and 1A529. One hundred ninety-one cases our code 2280-20, Neet aerosol, seven ounces, code K413, and one hundred ninety-one cases Neet lemon, seven ounce, date code C422 and C425. Two hundred thirty-nine cases code 280-10, Preparation H Suppositories, twelve, and date code A514, A515 and A516. And, one hundred fifty-nine cases code 288020, Preparation H Suppositories twenty four, and date code A516, A517 and 520.

Q And did you, in fact, receive those goods from the FBI on February 6th, is that correct?

A That's correct.

Q I show you Government's Exhibit 25 in evidence, and ask you: If that list corresponds to the receipt that you just read?

A There is a slight difference in the amounts.

Colgan

Q What would the difference be?

A In every case, I received back one less case of the item described that is on the Government's Exhibit 25.

Q Can you explain this difference, sir?

A Yes. Those nineteen cases, I believe the total is nineteen cases, those cases were retained by the FBI as evidence.

Q Now, the cases are coded; is that correct?

A That's correct.

Q And could you explain what the code is?

A That's date code, for instance 1A527 in the case of Anacin twelve would let me know when that merchandise was produced and at what facility it was produced. In a five digit code, the first digit would indicate the shift or crew producing. The second digit would identify, the second two digits would identify the month of the year and the last two digits would identify the date of the month. The numerical and letter arrangements in digit number two and three would indicate to me whether it was produced in Hamilton, New Jersey or Elcart, Indiana. In the second digit is a letter that indicates New Jersey production and vice versa, if the second digit is a number, that would indicate Indiana production.

Colgan

Q Using the code and corresponding entries particular product and the number of cartons indicated on the receipt returned to you, can you tell whether or not the case is returned to you on February 6, 1975 by the FBI relate to the January 30, 1975 shipment to Dallas?

A Yes. The quantity and products date codes match identically.

Q And that shipment never arrived in Dallas; is that correct?

A That is correct.

MR. CORCORAN: Thank you. I have no further questions.

THE COURT: Mr. Youtt?

MR. YOUTT: I have a couple of questions, your Honor.

THE COURT: I would offer Government's Exhibit 26 and 27 in evidence.

Any objection, Mr. Youtt?

MR. YOUTT: I want to look at them. Your Honor, could I ask a couple of questions with respect to Exhibit 27?

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. YOUTT:

Q I'm handing you Government's Exhibit 27. Can you tell me is that the document which was the return receipt of the goods which were returned to you; is that correct?

A Yes, that's correct.

Q Now, can you tell me from looking at that document, where the shipment commenced; in other words, what original, my question is, can you tell from the document that those are other goods which came from the FBI or do you need other information to make that conclusion?

A No. I can tell that these were given to the driver for Laurel Hill Trucking Company in Brooklyn by one of the FBI agents.

Q How can you tell that from the document?

A I had signed originally, originally consigned to Dallas Warehouse, and here it is received from T.B. Trucking, Laurel Hill, Brooklyn, New York, and I also have records, receipts that the truck driver received it from the Federal Bureau of Investigation, outlining the material.

Q But I take it that you have some independent knowledge you were to expect the returns of goods from the FBI in Brooklyn; is that correct?

A That's correct.

Q And based upon that independent knowledge coupled with Government's Exhibit 27, you have been able to draw the conclusion that the goods represented on Government's Exhibit 27 were, in fact, the goods which the FBI received?

A Would you repeat that, please?

Q You needed to draw upon your independent knowledge as to the fact that you expected goods to come from the FBI in Brooklyn, in order to conclude that those are the goods that are reflected on Government's Exhibit 27?

A No, I did not expect the goods from the FBI. I knew they were coming.

MR. YOUTT: I have no objection with respect to Exhibit 27.

THE CLERK: Government's Exhibit 27 previously marked for identification, is now marked in evidence.

MR. YOUTT: Nor do I have an objection with respect to Government's Exhibit 26.

THE COURT: I may be marked.

THE CLERK: Government's Exhibit 26, previously marked for identification is now marked in evidence.

Q Handing you again Government's Exhibit 26, Mr. Kahan, that is the original shipping document which your company prepared in order to ship the goods which later were returned to you; is that correct?

A No.

Q No, that's not?

A It is not. The original shipping document is a manifest.

Q Okay, was that prepared, who was that prepared by?

A That is prepared by our own plant, reflecting what was loaded in that shipment.

Q And that shipment was on one truck or one trailer?

A That is correct.

Q Now, were there items from that trailer returned to you at some time other than the shipment which is reflected in Government's Exhibit 27?

A No.

Q That's the entire shipment then, aside from the losses were the slight shortages about which you testified?

A The entire shipment is not listed on this particular receiving report, there is an additional page of the receiving report, the two combined would add up to this.

Q And the additional page of the receiving report is something which should be added then?

A Yes. It's the same, it's identical. It would be identical, but different quantities and different items. For instance, Anacin twelve 3050, there is another page covering the balance of the goods simply because it would endorse it on this one document.

Q Did you bring that document with you?

A I have a copy with ;me, yes.

Q So then there is a second page to this document; is that correct?

A Well, not to this document, a separate --

THE COURT: What exhibit?

MR. YOUTT: Government's Exhibit 27, your Honor.

Q Now, with respect to what you call the date code --

A Yes.

Q -- those codes indicate a point of origination in addition to the other information, I take it?

A A point of manufacture.

Colgan-cross/Youtt

Q Manufacture?

A That's correct.

Q What were the two locations of your manufacturing plants, one in Indiana and --

A One in Hamilton, New Jersey and the other is in Elcart, Indiana.

Q Now, do those two manufacturing facilities ship nationwide or do they divide their shipping territories?

A Neither one ships to the entire U.S.

Q Does each of those two locations have a specific territory that it ships to?

A That is correct.

Q So that -- well, let's say if the State of California were in the shipping territory of your Hamilton plant --

A No.

Q If a box of goods were to show up on a shelf of a wholesaler in California, bearing the date codes which indicated to you production in Hamilton, would you be able to draw a conclusion as to whether or not those goods had arrived there in proper channels?

A No, I could not.

Q In other words, it would have been possible for something produced in Hamilton to allegedly arrive in

California?

A It is conceivable, yes.

Q But it just would not have been shipped there by your Hamilton plant?

A That's correct, it would not be shipped,by my Hamilton facility. A customer in the State of California.

Q Would you be able to tell -- well, did the date codes vary by days, obviously?

A Yes, they do.

Q Each day is a different code; would you be, do you list the date codes on any internal papers of your company's operation so that you could tell from reading date codes where any given box was supposed to go?

A Yes, we keep records when a stock transfer is loaded, of not only the products, for instance, some of the cases of Anacin twelves, but so many cases of Anacin twelves with products codes one, two, three, four, for example on that trailer.

Q So that if you were to look at a box of your product, with a given product code on it, and you were to learn let's say that particular box showed up in Ohio, you would be able to tell from your documents whether or not your Hamilton office or Hamilton company had actually shipped that box to Ohio, based upon the date code information?

A No.

Q Well, assuming that date code, I assume the date codes are the same for all products produced on a given day by a given location of your company; is that correct?

A Correct.

Q If you ship no boxes of goods to Ohio, let's say on January the 19th and they were to, let's say you were to find a box of let's say Preparation on the shelves of a warehouse in Ohio, with a date code that would indicate production on January 19, 1977, you would be able to conclude, would you not, that that box was not shipped by your Hamilton office to Ohio?

A Unfortunately, Ohio is a bad example because Hamilton would ship to customers in Ohio.

Q I understand that, and now my first earlier question was about California, where Hamilton would not ship, but my question is, let's assume Ohio is a state Hamilton would ship to.

A All right.

Q And let's assume that you shipped goods to Ohio on January 18th, but you didn't ship any goods to Ohio on January the 19th.

Colgan-cross/Youtt

You learn from somebody that there's a box of goods on a shelf in the warehouse in Ohio, with a date code indicating production on January the 19th, the date you didn't ship any goods to Ohio, or the date you didn't send any goods produced on that date to Ohio.

You would be able to conclude from that, that that box of goods was not shipped originally from Hamilton to Ohio?

A That's correct. It is not shipped from Hamilton plant to that point in Ohio.

Q Is any effort made by your company to police, strike to police, that's a word of different definition, to check up on where its products are going ultimately, based upon an evaluation of date codes in locations throughout the country?

A No, but we have the ability to determine if the need arises where every single case of a given product date code ultimately went.

MR. YOUTT: Thank you sir, I have no further questions.

THE COURT: Anything further?

MR. CORCORAN: I have no further questions.

THE COURT: You may step down. Next witness.

MR. CORCORAN: Your Honor, may I approach the bench?

THE COURT: We'll take a short recess. The jury is excused.

(The jury leaves the courtroom.)

MR. CORCORAN: Your Honor, in view of Mr. Youtt's cross-examination of Mr. Cogar, particularly with reference to monies that he received after March of 1975, and the trouble that he might have gotten into with the law after 1975, I believe he suggested that Mr. Cogar had a reason to fabricate with regard to his conversations about which he testified.

Consequently, I am going to offer in evidence testimony of Agent Gartten as to what he was told by Mr. Cogar, and when he was told by Mr. Cogar.

THE COURT: I won't allow it, I don't think this is a case of recent fabrication, every cross-examination would then be grounds for introducing prior inconsistent statements. I don't see it here, at all.

MR. CORCORAN: In that event, your Honor, I have a handwriting expert who is scheduled to arrive tomorrow morning, and by virtue of what we adduced here today, I didn't anticipate our case ending this quickly, or having gone thus far this quickly, and he is not here yet and I also have another brief witness with regards to the order records.

THE COURT: You said the handwriting expert might be here today?

MR. CORCORAN: On the flight from Washington in the morning.

THE COURT: I see. All right, we'll take the other witness and then we'll have to suspend.

MR. CORCORAN: He's not available either. He was, what I was explaining was that he is approximately a five minute witness, and he will be available in the morning as well. I then am anticipating resting the Government's case tomorrow morning.

THE COURT: You will be ready to proceed tomorrow morning?

MR. YOUTT: Yes sir, I will.

THE COURT: So we may very well complete the case --

MR. YOUTT: I have probably four witnesses, your Honor.

THE COURT: And leave summations and charge for Monday.

MR. CORCORAN: There may or may not be a rebuttal, depending upon what --

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THE COURT: Well, all right, seat the jury.

(The jury is seated.)

THE COURT: I have been advised by the Government that they have no more witnesses availabl today and so we'll have to suspend rather early. The Government advises me that they have two more witnesses, and they expect to rest tomorrow, early tomorrow, and then the defense will have the opportunity to offer any proof that they wish to offer.

The chances are that the evidentiary part of the case will be completed by tomorrow and then I have to be in the Court on Friday, so the case will recess tomorrow and then go over to Monday and then in all likelihood we will hear the summations and the charge on Monday. That's about the schedule that I anticipate, but for now, the jury is excused. Don't talk about the case, when you reassemble tomorrow, please don't discuss among yourselves again, and we'll start the case promptly at 10:00 o'clock.

Everybody will be here on time, and we can get started on time. The jury is excused.

I will expect a request for charge tomorrow morning?

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MR. YOUTT: Fine.

THE COURT: I'd appreciate it if the parties remained in the courtroom for at least five minutes, to give the jury an opportunity to leave the building.

(Continued on next page.)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
:
-against- 75-CR-762
:
CHAIM KAHAN, SOLOMON
WERCBERGER, MOR WERCBERGER, :

Defendants. :

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United States Courthouse
Brooklyn, New York

January 20, 1977
10:00 o'clock A.M.

Before:

HONORABLE JACOB MISHLER, Chief U.S.D.J.

PAUL KLIMASZEWSKI
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: PAUL CORCORAN, ESQ.
Assistant U.S. Attorney

HARRY E. YOUTT, ESQ.
Attorney for Defendants

THE CLERK: Criminal cause on trial U.S.A. versus Chiam Kahan, Solomon Wercberger, Mor Wercberger.

MR. YOUTT: Good morning, your Honor.

THE COURT: Good morning. Seat the jury.

(Jurors seated.)

THE COURT: Good morning, ladies and gentlemen. We must wait for the United States Attorney.

MR. CORCORAN: I apologize for being late. The handwriting expert just arrived.

THE COURT: Will you please call him, Mr. Corcoran.

MR. CORCORAN: Thomas Delaney.

THOMAS A. DELANEY, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Would you state your name and spell it for the record.

THE WITNESS: My name is Thomas A. Delaney, D-E-L-A-N-E-Y.

THE CLERK: Be seated please.

MR. CORCORAN: Your Honor, at this time I ask that I be able to distribute photostatic copies of Government's Exhibit 2 and Government's Exhibit 6 to the jury.

THE COURT: They're in evidence?

Delaney-direct

MR. CORCORAN: They're in evidence.

(Exhibits distributed to the jury.)

MR. CORCORAN: May we have this marked, 3500 material, please.

THE CLERK: Documents marked Government's Exhibit 3500-17.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Can we have your name for the record, sir?

A Thomas Delaney.

Q And by whom are you employed, Mr. Delaney?

A I have been an agent with the FBI since 1953.

Q And what particular position are you employed by the FBI?

A Since '53 I've been assigned to the FBI Lab in Washington, D.C.

Q And in what capacity did you work in the FBI Laboratory?

A I conduct a variety of examinations including the examinations in comparisons of handwriting and hand printing.

Q And how long have you been doing the handwriting analysis, sir?

A Since 1953.

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Delaney-direct

Q Approximately how many documents have you examined for handwriting during that period?

A I have no idea but I would, probably say, hundreds of thousands.

Q Have you testified in Court with regards to your findings, sir?

A Yes. I have testified in state, local, federal courts.

Q On how many occasions, sir?

A I'd have to guess 150, 200.

THE COURT: I find Mr. Delaney qualified to offer expert opinion in the field of handwriting.

MR. CORCORAN: Thank you, your Honor.

Q Mr. Delaney, I show you what's been marked as Government's Exhibit 2 and Government's Exhibit 6, Government's Exhibit 6 being a photostat.

Have you had occasion to see those documents before, sir?

A Yes. I have made a comparison or examination of the writings on these two documents.

Q May I have the originals?

A I have photographs of the documents, yes.

Q Based upon your examination --

THE COURT: Excuse me, do you intend

demonstrating by enlargements on any board?

THE WITNESS: No, I didn't have sufficient time to make enlargements and this is the reason for xerox copies.

THE COURT: I just wanted to know if you needed the board.

THE WITNESS: Thank you.

Q Based upon your comparison analysis of these documents marked Government's Exhibit 2, which for purposes of this testimony we'll refer to as the Schick document, based upon the word, the second entry on that form, sir, and the Government's Exhibit 6 which is the purpose of your testimony, I ask you to refer to as the Whitehall document.

Can you tell us about the handwriting which appears in the upper portions of those exhibits?

THE COURT: If the jury wishes, you can disengage the copy because you may want to place one beside the other.

Q As a result of your examination and comparison, have you formed an opinion with regards to the handwriting appearing on these two documents?

A I have formed an opinion regarding portions of the writings on the two documents, yes.

Q And will you explain to the jury what portions you're referring to?

A On the Schick document which has been identified as Government's Exhibit 2, and I make reference in the upper left corner to the word "Clinton, Connecticut, Schick, International Trading Company, Care of CBS Warehouse, foot of 50th Street, Brooklyn, New York," that is the writing I'm considering on that particular document.

Q And with regards to Government's Exhibit 6, the Whitehall document?

A On the Whitehall document I make reference to the writing, "Whitehall Lab, Incorporated, A. Perez, San Paolo, Brazil, Care of CBS Warehouse, foot of 50th Street, Brooklyn, New York", this is the writing to which I will be referring to on the second document.

And as a result of my examination it is my opinion that these two sets of writings were written by the same individual.

Q Will you please explain to the Court and jury the reasons for that opinion, Mr. Delaney?

A It's simply all handwriting examinations are simply side by side comparison of the writings involved and the comparisons of the so-called characteristics in the writing. And, by characteristics I mean just about anything in the writing, the size, the shape of the letters, the comparative height of the letters, the shapes of portions of the letter, and, for example, in the Schick document in the word "Schick", notice the upper case letter S, it is extended with what I call the tail of the letter, the lower left hand portion of the letter. That characteristic is very similar to the tail of the letter S in San Paolo on the Whitehall document.

Notice for instance --

Q Can you refer to the lines which you're speaking of in your testimony?

A Notice for instance on the designation line of the Schick document, the symbol for Care of, you've got the capital letter C and the slant and the capital letter O and notice that same symbolization in the line designated "Route" in the Whitehall document.

Notice how the capital letter C ends very abruptly, that characteristic is present in the writings on both documents.

I notice for instance the upper case letter Capital letter W, on the line designation in the Schick document and the upper case letter capital letter W on the line "Route" in the Whitehall document. Notice the center portion of the capital letter W, how low it is

Delaney-direct

in comparison to the extremities of the letter.

Q That would be the capital letter W in warehouse, the word "Warehouse" appearing in each of those documents?

A Yes. And, even such things as once again, the Schick document and the line "Route", "Foot" F-O-O-T, there is a period after the foot. I don't know why but this is a characteristic, and that same peculiarity appears in the line designated "Route" in the Whitehall document.

I notice after the word "Foot" there is a small period after the word. I notice, for instance on the line designated "Deliver and carry" on both documents, the Y in New York is very similar in both documents.

Going back to the word "Foot" on both documents, notice the relative type of the letters involved, the size of the letter F as compared to the two letters O and the letter T, for instance these things are considered and these things are considered characteristics.

I notice for instance in the word "Warehouse" on the line designation in the Schick document and then the same word "Warehouse" on the line "Route" in the Whitehall document, notice the height of the letter H for instance, it's taller than the rest of the letters, for the most part in the words, and these are characteristics.

But, these are some of the characteristics and there are many more involved but these are the type of characteristics I find common in the writing on the both documents, and based on the many characteristics in common, it is my opinion that these writings were prepared by one and the same individual.

Q Is that a positive conclusion, sir?

A It's my definite opinion, yes.

MR. CORCORAN: Thank you. I have no further questions of this witness.

THE COURT: Mr. Youtt?

MR. YOUTT: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. YOUTT:

Q Mr. Delaney, would you describe the conditions of the office or laboratory in which you make your comparison analysis?

A The condition?

Q What type of a place is it, is it an office room or is it a scientific laboratory?

A No. It's just an ordinary room and usually to a given room, in my room I'm assigned there with another agent and we each have our own individual desks and each individual systems.

Q I assume it's a well lighted room?

A Right.

Q And I assume also that you probably have available to you some assistance devices such as magnifying glasses?

A If we think they're necessary, yes.

Q And do you have any other scientific tools, measuring tools or anything like that that you apply to comparison documents?

A They're available but I didn't use them in this particular case.

Q Now in this particular case you made a comparison between Exhibits 2 and 6, the bill of lading to CBS Warehouse and the bill of lading, well the bill of lading for Schick and the bill of lading for Whitehall Labs; is that correct?

A Well, yes, that's correct.

Q Did you also compare these documents or either of them with any other document?

A Yes. As I recall there were other documents submitted for examination in this case.

Q Do you recall whether or not you made a comparison with documents which I'm handing you now,

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Government's Exhibit 10?

A Yes. I made an examination pertaining to Government's Exhibit 10.

Q And Government's Exhibit 10 is the copy of the bill of lading which went to S & F Warehouse; is that correct?

A Yes, that is correct.

Q The destination classification indicates S & F?

A That's correct.

Q And refers to a quantity of Schick blades, also?

A That is correct.

Q Did you draw any conclusion with respect to whether or not what I will call the S & F bill of lading, Exhibit 10, was written by the same person as the person who wrote the Schick bill of lading, Exhibit 2, I believe?

A Well, I'd have to check on my notes but just from eyeballing it so to speak, it would be my opinion that the writing in the same area of this document were written by the same individual, by the writing that I just described a moment ago.

Q I take it that drawing that conclusion, you would make the same comparison of the lengths and

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Delaney-cross

configuration of the letter S in the word Schick and --

A Not only that, but many other points of similarities, also.

Q All right.

A But here again, this is a cursory opinion. I'd have to check my notes to find out exactly what I said during the comparisons which I made, so I think it's been two years ago now.

Q Do you recall, and in other words at this point, you have no specific recollection as to the conclusions that you drew in the comparison?

A No, I'd have to go back and check my notes as I did for these two previously indicated items.

Q Do you have those notes available to you: again, I won't ask to see them, but if they will help you refresh your recollection, you may refer to them?

MR. CORCORAN: Your Honor, I believe the 3500-17 would be a copy of that report.

A You're referring to what report; do you have a report?

Q I have a copy of a printed report dated June 25, 1975.

A I don't have a copy of that report with me.

Q Okay, I can show you that report, I just don't

Delaney-cross

-- It's marked 3500-17 for identification, I don't say that it will answer your question, but it may.

A I'd have to go back and do a file review in order to get the appropriate association of the report and the evidence which I examined.

Q Well, based upon your visual analysis here in the Courtroom, comparison between the two documents, the S & F bill of lading and the CBS Schick bill of lading, I take it that you see enough points of comparison that you can arrive at the opinion that both documents were prepared by the same individual?

A Well, those portions which I identified previously, the upper portions, the writing in the upper portions of this document, as I recall I didn't mention for instance the notations razors and blades and the holder for shipment. I did not mention those.

I was testifying to the upper half of, you might say of the documents involved.

Q All right, but again making the comparison then between the two documents that I'm discussing now, they both essentially have the same language in the first two, three lines; do they not?

A In the upper portions, yes.

Q And on those, I will say let's start with the

C in Clinton, Connecticut, we find in those, do we not, the same kind of abrupt ending to the C that you testified to in making your other analysis?

A Yes.

Q And we find that twice, both in Clinton and in Connecticut; is that correct?

A That's correct.

Q And we also find the configurations of the tail on the S that you testified to in both the S in Schick on the CBS document and on the S & F document?

A That is correct.

Q And then as we go down I think we find, if we compare the warehouse configurations we find a capital H, do we not in the middle of warehouse on both of those documents, which you testified was a characteristic?

A That's correct.

Q That confirmed your other opinion?

A True.

Q And would it be a characteristic point of analysis when we look at the R in razor on both of these documents that tail of the R dropped below the line in a significantly similar fashion?

A Yes. Are we considering that with the upper portion or are we considering it separately?

Q Again, let's make the comparison of these two documents here, eyeball value?

A Yes, that's true.

Q Are there any others in the lower portion of the page, are there any other significant comparison points that strike you at the present visual analysis?

A No. We're talking about the Schick document and the S & F Warehouse document, the two, and the one you presented to me?

Q Both CBS that you analyzed in comparison with Exhibit 6 and Exhibit 2, and in Exhibit 10 which is the S & F bill of lading?

A Yes. There are many points of similarity in the writings on Exhibit 2 and the S & F document which you handed me.

Q All right. Now, it is a fact is it not that you compared the printing on Exhibit 2 and Exhibit 6 with a smaple of handwriting given to you by an individual named Mr. Frank Joseph Malone; is that correct?

A Yes, I recall that name.

Q And did you reach any conclusion as to whether or not this individual named Frank Joseph Malone prepared document number 2 and 6?

A Well, reading the copy of the report which you

Delaney-cross

just handed to me, it was my opinion that I said it was determined that the writer of capital letter K1 which was identified as Frank Joseph Maloney prepared the printing in question on Q1 and Q2 of the case entitled Chiam Kahan capital K-A-H-A-N, Solomon Wercberger et al.

Now, I would have to go back into my file to identify the Q1 and the Q2.

Q Are you able to tell us whether Q1 and Q2 are exhibits 2 and 6, by any chance?

A I think I have it now. The Q1 would be the Schick document, Exhibit 2, Government's Exhibit 2.

Q Okay.

A And the Q2 is the shipping order dated 3/12 at Clinton, Connecticut from Schick, consigned to International Trading Company, S & F Warehouse, Brooklyn, New York, that would be Exhibit 6.

Is it 6 or 10?

Q 10, I believe which are the ones your fingers are on, so what you're referring to actually Q1 and Q2 are actually the documents that I was asking about, rather than the second document Mr. Corcoran was asking about?

A That's right, Exhibit 6.

Q But, on Exhibit 6 just to clarify it, Exhibit

Delaney-cross

6, the exhibit that you testified to to Mr. Corcoran concerning that, you are able to make an eyeball analysis here in the Courtroom to confirm it was written by the same person; is that correct?

A That's true.

Q Do you recall whether or not prior to today you analyzed Exhibit 6 in your laboratory?

A Well, I had in my laboratory and my identifying tag is on it, Exhibit 6 I had in my possession because I made a photograph of it and I brought a copy of it to the Courtroom.

Q And you reached the conclusion at the time you made the analysis in June of 1975, that Frank Joseph Maloney prepared documents which are now in evidence as exhibits 2 and 10; is that correct?

A 2 is correct, I'm not really sure in my own mind yet that Exhibit 10 is Q2 as identified in this report.

Q Just, without -- I'm not attempting to confuse matters.

Can you say at this point that the same person prepared Exhibit 2, 6 and 10, so we can avoid this confusion?

A Yes. The portions in the upper half of these documents, yes, it is my opinion that the one person wrote that material.

Q All right, and that person you identified in comparison analysis in June of 1975 as being one Frank Joseph Maloney?

A That is correct.

MR. YOUTT: Okay, thank you, I've no further questions.

THE COURT: Anything further, Mr. Corcoran?

MR. CORCORAN: Just to clarify.

REDIRECT EXAMINATION

BY MR. CORCORAN:

Q And this is the same person who wrote the Whitehall document and both Schick documents, the upper portions of those documents; is that correct?

A Upper portions, correct.

Q Of all three?

A All three.

MR. CORCORAN: Your Honor, may we circulate it. I won't ask to have copies made at this point, but may we circulate Exhibit 10 to the jury so that they may see the document I was referring to?

THE COURT: Surely. Martin, would you please give it to the Foreman, Exhibit No. 10.

MR. CORCORAN: No further questions.

THE COURT: You may step down. Thank you, Mr. Delaney.

Next witness?

MR. CORCORAN: May I step outside for a moment, your Honor?

THE COURT: Yes. If at any time during the deliberations you want to again look at a copy, you can ask for them and you will get them.

MR. CORCORAN: Government calls Irving Rosen.

IRVING ROSEN, called as a witness, having first been duly sworn by the Clerk of the Court was examined and testified as follows:

THE CLERK: Would you please state your name and spell it for the record.

THE WITNESS: Irving Rosen, R-O-S-E-N.

THE CLERK: Be seated.

MR. CORCORAN: Mark these please.

THE CLERK: Document marked Government's Exhibit 28 for identification.

MR. CORCORAN: Thank you.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Rosen, what business are you in, sir?

A Car rental business.

Q And where is your car rental business located?

A 160-14 Hillside Avenue, Jamaica, Queens.

(Continued on next page.)

Q And the name of the business, sir?

A Well, it's Rojo Leasing Corporation, doing business as National Car Rental.

Q How long have you been there, sir?

A Seven years.

Q Sir, I show you what's been identified as Government's Exhibit 7 and Government's Exhibit 7A, and ask you if you can identify the automobile that is depicted in those exhibits?

A It's my car, my plate number.

Q Is that a car that belonged to your car rental agency?

A Well, the plate does -- the car I would say would be the same car.

Q Have you seen that car before?

A Yes.

Q Now, is that car bearing license plate number what, sir?

A 738ZAO.

Q I show you what's been marked Government Exhibit 28 for identification, a photostat of a document; can you identify the document that is a photostat of?

A It's a rental agreement, written by me.

Q Is that rental agreement from your agency, National Car Rental in Queens?

A Yes, it is.

Q As to what car does that pertain, sir? Does that pertain to the car on Government's Exhibit 7?

A Yes.

Q And does it indicate you leased that car out for a period of time?

A Yes.

Q To whom did you lease that car, according to the rental agreement?

A The rental agreement, a Mr. Manuel Gomez, Post Office Box 23242.

Q And when did you lease that car to Mr. Gomez according to the rental agreement before you?

A March 1, 1975.

Q Excuse me. Is that March 1st or March 10th, Mr. Rosen?

A It could be March 10th because the zero didn't show up in the photostat.

Q May I see that document for a moment?

How is your eyesight, sir?

A Pretty good.

Q Does it appear that the zero is following the 1 on the day the car is rented?

A Yes.

Q It would be March 10th, would it not?

A March 10th.

Q When was the car returned, according to --

A March 21.

Q Does the document indicate what date the car was due back to National Car Rental, that is the car 738ZAO rented to Mr. Gomez on March 10th?

A March 12th.

Q It was due back March 12th; is that correct?

A Yes.

Q But it wasn't returned that day?

A No.

Q It was returned the 21st?

A Correct.

MR. CORCORAN: Thank you. I have no further questions.

THE COURT: Any questions?

MR. YOUTT: I would just like to see that.

MR. CORCORAN: Your Honor, I offer this as Government Exhibit 28 in evidence.

MR. YOUTT: No objection.

THE COURT: Let it be marked.

THE CLERK: Government Exhibit 28 in evidence.

THE COURT: Do you have any questions, Mr. Youtt?

MR. YOUTT: No, your Honor, I have no questions.

THE COURT: You may be excused.

THE CLERK: Government Exhibit 28 previously marked for identification now marked in evidence.

(So marked.)

MR. CORCORAN: At this time, your Honor, the Government rests.

THE COURT: The jury may be excused for a few moments.

(The jury leaves the courtroom.)

THE COURT: I'll entertain motions if you have any, Mr. Youtt?

MR. YOUTT: Thank you, your Honor.

At this time, your Honor, I move on behalf of all three defendants on time to exclude all of the testimony of the witness, Mr. Cogan upon grounds which I haven't really raised before.

I raise them for the first time now. As the Government has now rested and as my notes indicate, that there has not been established by independent evidence that Mr. Diamond was a member of the conspiracy. Now, I could be wrong, but I don't know

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where it's come in. If it hasn't, then statements attributable to Mr. Diamond by Mr. Cogar on the second day, and those statements including, stated about money and wrappers and about the Jewish people having all the money were not made by someone who was established to be a conspirator in the case. Statements by Mr. Santa on the previous day or on the 14th of March, the first conversation were made in the presence of only Mr. Diamond and Mr. Cogar and a couple of other individuals who never have been identified in any way as being part of this conspiracy.

So, certainly if there is only one conspirator present, he certainly wasn't saying something in furtherance of the conspiracy at that time, but was merely engaged in a social conversation with no other conspirator.

Now, if Mr. Diamond had been connected by extrinsic evidence to this particular conspiracy we might have a different circumstance, but because he wasn't I would ask that all of the testimony of Mr. Cogar be ordered stricken from the record at this time and the jury be instructed to disregard it.

THE COURT: How about the statements themselves? They indicate he was a member of the conspiracy?

MR. YOUTT: The statements, your Honor, are hearsay statements and the courts have held we can't bootstrap the conspiracy, a conspirator's status by the statements themselves; it must be established tha person is a member of the conspiracy before his statement can be utilized.

THE COURT: But his statement, Diamond's statements, supposed Diamond statements said, "Well, we hijacked the truck."

Wouldn't that be a statement that would bring him in the conspiracy?

MR. YOUTT: But that statement is nowhere in evidence, your Honor.

THE COURT: All right. Instead of saying that he indicates that he is familiar with the conspiracy and has participated in it, doesn't he, he's interested in showing that the money is there, that the money will be paid --

MR. YOUTT: Whatever statements were made by Mr. Diamond were statements easily which could have been made by someone who knew the crime had been committed by someone else, but is in no way part of the conspiracy.

THE COURT: I say that's possible; that would be the argument that Diamond's lawyer would make, when he was making the statement, he wasn't making them as a member of the conspiracy, he just heard something. That's an argument on the weight of the evidence.

MR. YOUTT: Absent that, there is no establishment of him as a member of the conspiracy and therefore, I contend that his statement is a hearsay assertion, an unavailable declarant cannot be used in this courtroom against my client.

THE COURT: As regarding the issue or in relation to the issue of Diamond entering the conspiracy or being a member of the conspiracy, the statement is direct evidence of his entry. With relation to these witnesses, whatever he said, of course, are hearsay statements; I think you'll agree to that.

MR. YOUTT: They are hearsay statements, that is right.

THE COURT: Sure, I mean, but don't you also agree whatever Diamond says on the issue of his entrance into the conspiracy are not hearsay, that to determine whether he's a member of the conspiracy, it's a statement or an admission.

MR. YOUTT: If he said, "I'm a member of the conspiracy."

THE COURT: All right, let's say he said it that clear.

MR. YOUTT: That would be an independent exception to the hearsay rule, which could qualify as extrinsic evidence of his membership.

THE COURT: We talk about hearsay, let's first identify the issue we're talking about.

MR. YOUTT: On the one hand, your Honor, talking about an admission that would apply against Diamond, on the other hand against my client, it's an exception to the hearsay rule which is based upon conspiracy agency.

THE COURT: I agree, except when we talk about whether Diamond was a member of the conspiracy, we'll have to consider whether that's hearsay.

Do you have anything to say?

MR. CORCORAN: Your Honor, I believe the independent evidence requirement would have to go to the defendant, and there is independent evidence as to their participation. It's not required as to Mr. Diamond who has in fact admitted his participation.

THE COURT: What evidence do you have that Diamond was a member of the conspiracy?

MR. CORCORAN: Diamond?

THE COURT: Yes.

MR. CORCORAN: As Diamond's statements in furtherance of the conspiracy, his statements that the defendants have been arrested, were stand-up guys, his admissions with regard to the monies that were paid.

MR. YOUTT: Santa is the one that said stand-up guys.

MR. CORCORAN: Well, Colgan's Cogar testimony was he took part in the unloading of the truck with Santa and the other individuals --

THE COURT: I overlooked that document. The testimony that Diamond participated in the unloading.

MR. CORCORAN: No, there wasn't testimony that he participated in the unloading. I believe Mr. Diamond admitted in his guilty plea to be the truckdriver involved, but Mr. Cogar testified that Mr. Diamond was a member of this group, and this group participated in the hijackings on a regular basis, and there was an overt conspiracy as to hijacked trucks here, which Mr. Diamond was clearly put into.

THE COURT: I find that there was enough to show Mr. Diamond was a member of the conspiracy. If you wish, I would again charge the jury that whether or not this is Diamond's testimony, is attributable to these defendants depends upon whether the Government proves beyond a reasonable doubt that he was a member of the conspiracy; that is a fact question.

MR. YOUTT: Certainly I would request that charge, your Honor.

THE COURT: You would.

MR. YOUTT: I will request that charge to be given again to the jury and the final charge.

THE COURT: I never gave this to Diamond because the issue was never raised, but of course, as a general provision I said that the Government must first prove the one that makes the declaration is a member of the conspiracy and I am willing to charge that they must, the Government, must prove beyond a reasonable doubt that Diamond was a member of the conspiracy before they can charge this defendant with the statements of Diamond.

That's where that partnership theory, lawful partnership is very helpful, but you rejected that analogy, so I'll accept that with a great deal of salt.

MR. YOUTT: I take it you have ruled on that aspect of my motion, and I will go into the next one.

I move to dismiss for a judgment of acquittal

Rosen

on the ground that the Government has failed to establish a prima facie case, specifically directed now to the issue of conspiracy in this particular matter, for the following reasons:

Your Honor, I have briefed on earlier occasions, my first motion before you. It's briefed in some detail in my memorandum of law at that time, pages 13 through 17, based upon the following theory: The substantive crime of receiving stolen property is one thing. The crime of conspiracy to do something is another, and it has been held numerous times by numerous circuits based upon the reasoning of a criminal law analyst named Mr. Wharton, that you cannot have a conspiracy to commit a crime that requires two people if what you're basing your conspiracy on is the interaction between those two people necessary to establish the substantive crime.

If we have a crime of receiving, I must receive something from someone else, and if all that I can establish for purposes of that substantive crime is the transfer, I cannot also plead and establish a conspiracy crime. All there is at best is the substantive crime. In this case, all that we have is proof, if it is proof, that a sale of these particular goods may have taken place, and beyond that proof which I substantially challenge, there is the established fact that the goods changed hands from other members of the so-called conspiracy to the defendants in this case in their capacity as warehousemen.

Now, I would contend, your Honor, that if anything, this may be a case to go to the jury on substantive offense of receiving, but it is not a case establishing a conspiracy. The Second Circuit in the case of the United States v. Deuli, 137 F. 2845, addressed essentially this issue in the case of alleged conspiracy to steal and receive gasoline ration books, and also there was a count in that indictment for the substantive crime which was with intent to convert, and the Court held that "If the conspiracy was confined to the transaction between Deuli and another by which the stolen books were sold, although both were guilty of the substantive crime, neither was guilty of conspiracy."

There are other cases which I cite at some length, including the recent Seventh Circuit case U.S. v. Varelli, 407 F. 2d 735, which specifically held in 1969, that the relations of buyer and seller even with knowledge of the character of the goods being sold is insufficient as to make them, the buyer, a conspirator. So, I would contend, your Honor, that even if we credit the Government theory that these individuals bought the goods in question, all we have is a substantive offense of receiving under the Wharton rule as expressed in our circuit, by the Deuli case we don't have a conspiracy of receiving.

Furthermore, I would contend that the Government evidence theory of purchasing is just that, and once we set aside some highly questionable credibility questions, all that remains is a possible case on the substantive offense of stealing, which I will address in a moment, but the basis of my motion at this time is that you can't have a conspiracy charge and the substantive offense based upon the Wharton rule.

THE COURT: Well, I have nothing to say on the Wharton rule because I haven't thought of it and you quote it in general language. All I can say is that you will have to face hundreds of cases, particularly in the narcotics field, where there were buyers and sellers in conspiracy charges, which have been upheld.

I haven't turned my attention to the Deuli

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rule but I can say that even if I accept your interpretation of the so-called Wharton rule in the Deuli case, there's much more in this than solely a strictly buyer and seller. There is proof here that these defendants were part of the scheme to hijack and to receive the goods, not just the buyer and seller deal. There is a prior history of it, with the same people, and there is an indication that as soon as the goods were hijacked they were delivered to the defendant, from which you may reasonably infer that they were aware and were part of the whole hijacking scheme.

This is not solely a seller and buyer deal.

Again, I haven't looked at the facts of Deuli and I haven't read Wharton, but I have occasion to have reason to refer to Wharton briefly, but I have read too many cases that involve buying and selling, when a conspiracy is also charged where the indictment has been upheld, hundreds and hundreds.

Your motion is in all respects denied.

MR. YOUTT: Thank you.

The additional grounds, your Honor, on my motion to dismiss is for failure to establish a prima facie case of conspiracy. Evaluating the evidence, I would ask you to rule that the evidence has not established the involvement of the defendants in a conspiracy, and I would also move to, at the same time, to grant a judgment or to move for a judgment of acquittal on the issue of whether or not the Government has established a prima facie case as to the substantive offense, upon the ground that the Government has merely established a transaction, which it is just as likely could be a legitimate transaction in a warehouse, couldbe a crime, as a result of which the issue should not be presented to the jury.

THE COURT: Motion denied. I feel it presents a fact question.

Seat the jury, please.

Are you ready to proceed, Mr. Youtt?

MR. YOUTT: Yes, I am, your Honor.

(The jury isseated.)

THE COURT: Mr. Youtt, are you ready to proceed?

MR. YOUTT: Thank you, your Honor, yes.

I'd like to call Mr. Mor Wercberger.

MOR WERCBERGER, called as a witness, took the stand and after having been first duly affirmed, testified as follows:

THE CLERK: State your name for the record and spell it.

THE WITNESS: My name is Mor Wercberger; M-o-r W-e-r-c-b-e-r-g-e-r.

DIRECT EXAMINATION

BY MR. YOUTT:

Q Mr. Wercberger, are you known by any nickname or other names?

A Yes.

Q Is Moishe one of those names?

A Moishe, right.

Q You're called Moishe by people who know you?

A Right.

Q How old are you, Mr. Wercberger?

A 29.

Q Where do you reside?

A 1446 46th St., Brooklyn.

Q Do you have a family?

A I have three children.

Q You are married, I take it?

A Right.

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M. Wercberger

Q You have heard some testimony in the past few days with respect to a warehouse known as the CBS warehouse. Are you familiar with the CBS warehouse?

A Yes. I was the Treasurer of the company.

Q You are Treasurer of the company?

A Right.

THE COURT: I ask you to speak a little louder so all the jurors can hear you.

Q Are you still the Treasurer of the company?

A I'm still the Treasurer of CBS.

Q Is CBS -- directing your attention to March of 1975, was CBS engaged in the business of public warehousing?

A Yes.

Q How long had CBS been in that business?

A Close to two years.

Q How long had you been with CBS at that time?

A Approximately three years.

Q You say, "approximately"; did you come to CBS after it was in business and operating?

A I was an officer in the beginning but I came in a few weeks later.

Q You were an officer at the inception, at the time that CBS opened?

A That's right.

Q Who were, at the time it opened, who were the other officers in CBS?

A Mr. Chaim Kahan, he was the President.

Q Is he seated at the defense table?

A Right.

And Mr. Solomon Wercberger; he was Secretary.

Q He also is seated at the defense table?

A Right.

Q Is Mr. Wercberger related to you?

A Yes, he is my brother.

Q When did you begin working for the CBS warehouse?

A A few weeks after we -- about June '73, in the end of it.

Q Did you have a building at that time?

A Yes.

Q And where was that building?

A It was called Building 58, it was at the foot of 50th St. in Brooklyn.

Q Did you own that building?

A No.

Q Did you rent it?

A Yes.

(continued next page)

Q Are you still a tenant in that building?

A No.

Q Did you enter the entire building?

A No, just the upper three floors and part of the fist.

Q Part of the first?

A Part of the platform space and insides.

Q In other words, you had a right of common access with other tenants on the platform area?

A Yes.

Q And then you entered the 4th, 5th and 6th floors?

A Right.

Q Now on those 4th, 5th and 6th floors, did you have any office?

A We had, we made a small office on the 4th floor.

Q Directing your attention again to March of 1975, what type of office facility did you have on the 4th floor?

A Small room, two tables and office equipment.

Q Did you have offices on any other floor?

A No.

Q How large a building was the CBS Warehouse building?

A Do you want to know the dimensions?

Q If you recall?

A The floor was approximately 150 by 150 feet. It was, as the lease said, it was 22,500 square foot, per floor.

Q How many square feet per floor, again?

A 22,500.

Q So you had approximately 67,000 square feet of warehouse space; is that correct?

A Right.

Q Now, directing your attention again to March of 1975, would you describe the exterior of the building at that time?

A Well, the building -- Excuse me, the building had a similar building adjoining to it with a platform, and it had the street going round and around those two buildings.

Q A street going, when you say "Around", what do you mean?

A In the back of it.

Q When we talk about the foot of 50th Street, the 50th Street actually ended somewhere near the CBS Warehouse?

A Yes, because First Avenue is in front of the building, that's the last street; the back streets and the streets to the buildings have no names, actually, it's just part of the street.

Q Are there buildings behind the CBS Warehouse?

A No.

Q What is behind the CBS Warehouse?

A Water.

Q Water; would that be the New York Harbor?

A Yes. Called the New York Harbor, in Brooklyn, I wouldn't know.

Q But there is a street you say that goes behind the building?

A Yes, before the docks.

Q Now the platform area, is that where, does that accommodate trucks who arrived and delivered merchandise to the CBS Warehouse?

A We got front platform for trucks, side platform for railroad cars.

Q Do you have a side platform for railroad cars?

A Right.

Q Do you unload railroad cars at that platform, or did you, in March of 1975?

A I can't recall on the month of March, if I, if we unloaded railroad cars, but we did unload railroad cars

Q Now, are there any other entrances to the building, aside from the front platform entrance and the side railroad entrance?

A There's a few entrances in the back and on the side.

Q Would you describe the other entrances to the building?

A To the best of my knowledge, there's -- When you come around the building there's a big overhead door for trucks, then there's regular doors for, to use for the hall and stairway, and on the side there is a few platforms and also entrances. I don't remember if they come to the building or to the platform.

Q Are there any platforms in the back of the building?

A In the back there is -- There is one piece of platform that can be used, front and back.

Q When you say --

A The end of the building.

Q At the end of the building?

A Right, and adjoining the two buildings is one that you use, both sides.

Q And is that something where it has an entrance from the back or front?

A There, you have to go from the back.

Q Is it possible to unload merchandise in that entrance?

A Yes.

Q Would you describe that entrance in some further detail?

A Well, there's two ways to unload, if you want to use the platform or if you want to load inside.

Q When you want to load inside?

A Right.

Q How would you load inside?

A You back in the truck and you take it off.

Q Inside, what is it, a garage?

A It's part of the warehouse.

Q And if you were to unload merchandise in that area, how would you get to the floor?

A We could get it to, straight through the elevator and take it up or we could take it, if it's a bigger load, and we want to take them up at one shot, we take it up through the platform and the big elevator.

Q There is an elevator in the rear area; that is a different elevator?

A Two in the front and one in the rear.

Q Mr. Wercberger, directing your attention again to March of 1975, you've heard some testimony here in the past two days about your receiving some shipment of Schick razor blades. Did you, in fact, receive those shipments at the CBS Warehouse?

A Yes, the company received the shipment.

Q And were you present at various times during the delivery of those shipments?

A Yes.

Q And at that time that you received those shipments, did you know that they were stolen?

A No.

Q Are you guilty of the crime charged against you in this case?

A No.

MR. CORCORAN: Objection, your Honor.

THE COURT: I'll allow it.

Q Now, Mr. Wercberger, I want to direct your attention to that period in March, 1975, March the 12th specifically. Was that the first day that you received a shipment of Schick razor blades?

A Yes.

Q So that day, were you expecting any shipments of any kind?

A In that week I was expecting.

Q What kind of shipments were you expecting?

A All kinds, particularly shipments of blades, any way.

Q You were expecting a shipment of blades?

A Right.

Q What kind of blades were you expecting?

A I didn't know what kind. Razor blades.

Q Do you know from whom you were expecting those blades?

A Yes. From, I think the company is, was Theresa Merchandise.

Q Were you told how many bladez Theresa would be delivering?

A It was supposed to be approximately to fit into a 20 foot container, I think.

Q Had you done business with Theresa in the past?

A Yes.

Q When you received your first shipment of the Schick blades on March the 12th, 1975, did you draw any conclusion as to where those blades came from?

A Could you repeat the question?

Q When the shipment, the first shipment of Schick blades arrived on March the 12th, 1975, did you have any opinion as to where those blades were coming from?

A It wasn't necessary. Said I think where it came from, Schick.

Q I'm sorry; whose blades those were?

A Well, I figured it was for this account, for Theresa Merchandising.

Q For Theresa?

A Yes.

THE COURT: Would you tell the jury what a public warehouseman does, what your relationship is to the area that you rent and the relationships to the goods that are stored there?

THE WITNESS: Okay. Public Warehouse rents space or buys space for public use, that anybody that wants to store merchandise can store at your place. And, there are certain basic rates for cubic foot, and what else.

THE COURT: Well, cubic foot; you mean you took the square and then the height and multiply, and that gives you the cube and you charge --

THE WITNESS: 6 and 8; basic rate 6 cents per cubic foot, storage there's 6 cents per cubic foot storage and 8 cents per cubic foot handling. It may vary if the items are peculiar in weight or in dimension, and it might rise in price, but it's usually, that is the regular rates that's charged by normal warehouses around the area.

THE COURT: And you handle the goods for customers from the time they're delivered to the loading platform to the time they're redelivered to the loading platform after storage, right?

THE WITNESS: Right. When a shipment comes in we take it off, we put it down on the platform; we count it up, we give the count to the driver, we send it up.

When somebody wants to come and pick up, he comes with a bill of lading or he comes to pick up by phone call, a lot of times he would send a release from the company stating that he has the right to pick up those goods. Then we send down the particular amount he wants and he signs for it, and he goes.

THE COURT: Okay.

Q How do you collect your shipping charges; I'm sorry, how do you collect your storage charges when someone stores goods in your warehouse?

A The procedure is you have to send in warehouse receipt showing the, showing us like this, you're in charge of the goods, that you're liable if it's going to be something missing from it. It's a legal receipt.

Q You send that to a customer; is that correct?

A Yes. And a company by invoice states charges for warehousing and storage.

Q And do you send out monthly bills to some of your customers?

A Monthly bills are sent. The first bill reflects the first month's charge and then after one month if the goods are still there, or any amount of goods that still is there, is charged accordingly.

Q Do you bill all of your customers or did you back in March, 1975 on a monthly basis?

A If the goods were still there in a month, you would charge for it.

Q Was there a quantity of goods which were not remaining in your warehouse for a month?

A Yes. A lot of goods would come in and one week or two weeks, and they would go out. So, there would be no monthly charge.

Q What is normal; how long was the average stay of a quantity of goods?

A There is no average, it depends on the sale. If it's a sale or if it's use of a client, if you can use it it's right away, or if he has got a customer for it right away.

Q Would you be able to say that more often than that a customer would leave his goods with you for less than a month?

A I couldn't say that.

Q Was it usual for a customer to leave his goods with you for more than a year?

A I think the most we had was we had six months, eight months; I don't know a year; I can't recall especially.

Q While you were in business did you send warehouse receipts to all of your customers?

A Right.

Q Were there occasions when you received goods that you had no address for the customer who ultimately owned the goods?

A Yes.

Q How did you send warehouse receipts to them?

A We did not until we got the firm who the goods belonged to.

Q And what would you do before you were confirmed as to who the goods belonged to?

A Well, we had a special file for incoming orders; we used to post a lot number for it and post it in our lot book, or if we would wait until somebody says it, then we post it.

Q How frequently in 1975 would you receive quantities of goods without the address of the ultimate owner on shipping papers?

A Well, it was an every day thing that could happen. It happened every day.

Q And what did you do with respect to the goods which you received without the address of the ultimate owner?

A If we had dealt with him before there was no problem. We knew where to send the bill.

Q Did it occasionally arise when you received goods consigned to an owner who you didn't recognize having dealt with before?

A Yes.

Q Did that happen frequently or infrequently?

A Well, that happens not too much.

Q What did you do in those occasions?

A We had to wait; there was no problem because the guys are the ones who are going to pay for it.

Q I didn't hear the answer?

A The problem was, we waited until we hear from the guy, that's the customer that owns the goods.

Q You waitned until he came to pick up his goods?

A Not to pick up.

Q You waited until when?

A He would tell that it's his goods, the owner of the goods.

Q How would the owner tell you it was his goods?

A We have to come up with at least a business card stating his name and giving me a check in that name, so that would cover me.

Q A check would be for --

A For storage and handling.

Q And after he had paid his storage and handling, then you would release the goods to him; is that correct?

A Not exactly. I would like to have a check to go, too.

Q You would hold the goods until the check cleared?

A Right.

Q Did you ever deal in cash in these transactions or in checks primarily?

A Only checks.

Q Did any shipper, did any owner pay you in cash?

A No, he could not.

Q Was that a policy of your company or just a practice, it didn't happen?

A No. See, if he were to pay in cash he would not not any insurance on his goods. He had to insure his goods in our warehouse, then it wouldn't state any place that he had those goods.

Q How is the insurance affected by whether or not he paid in cash?

A We don't have insurance in the warehouse for customers, just for negligence. Now, every customer has to insure his own goods for fire, theft or what.

So, in order to show any cost for collecting anything if something happened, he had to show that those goods were there and the only way he could show that, he had to show a bill and if he had a monthly statement that it was the goods were there and he would pay cash, it wouldn't reflect any place that the goods were still there.

Q So it was your practice not to receive payments in cash for storage fees; is that correct?

A No. The customer wouldn't even do it.

THE COURT: Were any charges due at that time the goods were delivered to you for storage?

THE WITNESS: As soon as it came in he

automatically he had to pay up front like rent, you start the first day.

Q When you say, "Up front", what do you mean by that?

A I mean the bill is due right away.

Q But you didn't have to pay before you took the goods in?

A No.

Q That was something which you worked out either on your monthly billing or at the time a person identified the goods and decided to take them out; is that correct?

A Right.

Q Incidentally, Mr. Wercberger, prior to your entering the CBS Warehouse business, had you had any previous experience in warehouse work?

A No.

Q Where were you employed prior to coming to the CBS Warehouse?

A Well, I worked a little bit for my father and mostly I did schooling only.

Q I didn't hear?

A I mostly I did schooling only.

Q And that was back in 1973 then that you came into this business; is that correct?

A Right.

Q And you were what, approximately 24 years old at that time?

A Yes.

Q And at that time or prior to that time, the nature of the work that you did for your father, did that involve any kind of warehouse work?

A No. I did bookkeeping, that was my job.

Q Where did you obtain your school or your education?

A As far as what?

Q Where did you go to school, from the time that you left, say between the time you were 18 and the time that you finished school?

A Well, I went to the same school I went before I got married. I stayed there for a couple of years, I don't remember how long, and decided to correspondence for bookkeeping a little bit in high school.

Q So what was the nature of the school that you went to; tell us the name of the school that you went to?

A At that time, the name was Yeshiva Chaim Salin.

Q And where was that located?

A Now it's located at 15th Avenue, between 48th, 49th and 50th.

Q In Brooklyn?

A Brooklyn.

Q And at that time, it was located somewhere different than that, the earlier location?

A It had moved from Williamsburgh section; it was on Bedford Avenue.

Q It moved from the Williamsburgh Section in Brooklyn. At the time you attended, it was located in the Williamsburgh section of Brooklyn?

A When I attended, it was in Brooklyn.

Q How long did you go to that Yeshiva?

A I started there when I was 16 and a half. I was there to 17 and a half and I went to another school for one year and I got married, and I came back to this one because this one was nearer to myhome.

Q What type of subjects did you study at the Yeshiva?

A Talmudico.

Q Talmudico?

A Right.

Q In other words, religious studies?

A Mostly.

Q Directing your attention back to March the 12th, 1975, Mr. Wercberger, you testified you were expecting a shipment of razor blades.

My question to you, I don't know if you answered it or not, was; When you received, first saw the shipment of Schick blades, whether you determined in your mind that those were the blades you were expecting?

A Yes.

Q Did you later learn that those were not the blades that you were expecting from Theresa?

A Yes.

Q How did you learn that?

A Because I called them up.

Q When did you call them up, and when you say "Them", you are referring to Theresa?

A Yes.

Q Theresa is a customer you had dealt with on some occasions in the past?

A Right.

Q When did you call them up?

A I called up on the date it was because I wanted to complain about the shipment.

Q Complain about what shipment?

A Usually the system of cosmetic or toiletries are set up to be shipped by skids, that means pallatized, that means it's not the -- It doesn't come loose cartons, it comes in a load on skids, and that's the way we charge you before we're not involved in too much work.

Q When you say, "Too much work", you mean the work of stacking and sorting and setting up on pallates?

A Yes, to pick up a skid with a hi-lo or jack and take them off, one, two, three.

Q What is a hi-lo?

A A hi-lo is the truck that lifts up skids.

Q In your previous dealing with Theresa, had Theresa delivered to you --

A Mostly on skids.

Q Pallatized containers?

A Right.

Q And so you called Theresa?

A This was loose freight.

Q I'm sorry?

A That was loose freight.

Q Your shipment of Scnick blades on the 12th?

A Was loose.

Q And, by "loose" you mean a pile of boxes in a truck?

A Right.

Q And what did that mean, require you to do at

CBS Warehouse?

A Well, normally it's no problem. I give them skids for the drivers and they load them up on the skids.

The only thing I do is count, show them how to do it, the way I want it and then I stay there until the finish of the skids and I count it and put on it on the side.

Q So you had received unpallatized shipments in the past, prior to --

A Not too much, because I always made a rule of it and they tried to comply with it.

Q And did you tell Theresa about that rule?

A Yes.

Q Had you received any unpallatized shipments from Theresa in the past?

A It may have been a shipment of 50 cartons but nothing more than that.

Q Directing your attention now back to your call to Theresa; do you recall when you made -- Did you make it on March the 12th?

A Yes.

Q When on March the 12th?

A Time?

Q Well, with respect to when you received the shipment of Schick blades; did you make it while you were receiving it or after it had come in?

A While we were loading it, probably.

Q While youwere loading it?

A Down there.

Q When you say, "While we were loading" --

A I mean while it was loaded down from the truck.

Q While it was still loaded on the truck?

A No. I call loading down, that means taking off the truck.

Q When you say, "Loading down", that means unloading of the truck?

A Unloading.

Q To your pallates; is that correct?

A Right.

Q What information did you receive from Theresa?

A I complained about mixture of stock styles and he says, "What do you mean by mixture of style; what style."

He told me, "What is there?" I told him what it is. He says he's not waiting for Schick, he's waiting for another kind of blade.

Q What kind of blade?

A Wilkinson.

Q Did you receive a shipment of Wilkinson blades on March the 12th?

A I don't know if it's the same date we had received a shipment prior to this, Wilkinson blades.

Q Did you receive a shipment later than that, also?

A Yes. We received later than that, too.

Q Now, when you learned that it was not Theresa who was delivering or who was responsible for the unpalletized shipment, what did you do?

A We just kept on taking it off, not -- We took it off, we made the guys take it off that delivered, the truck drivers, to put it on the pallets and I was down there seeing how they was, all kinds of different items and we tried to consolidate every item separate so we could count them. If you mix together two items, they don't stan right on pallets because of the size.

Q Where did you make this mixture, assortment of different products?

A Everything on the platform.

Q On the loading platform?

A Right.

Q Or the unloading platform?

A Right.

Q Is that where you also stacked on the quantity of pallets?

A Right.

Q And what did you do then with respect to the goods?

A Well, when it was finished I unloaded so it was counted by somebody and recounted again, and I put it down to a piece of paper how much it was from each item, and I told the guy, the driver there that it doesn't correspond with the amount he is put on the bill of lading, and he told me that's what they told him it was.

Q What are you talking about, the driver?

A The driver of the truck, right.

Q The driver of the truck gave you a bill of lading?

A Yes, stating an amount.

Q Do you recall what number was on that amount?

A It was 16 -- I couldn't remember exactly what it is.

Q 1,654?

A Maybe, I don't know.

Q When he showed you that bill of lading, you told him what?

A That as far as I see here, when we counted up and your truck is empty, we don't have that amount.

Q Do you recall how many he reported that you had?

A I've heard 1,606.

Q And what conversation did you have with the driver concerning that difference in the number?

A He told me he doesn't know because he got his truck and this is the bill of lading, he didn't count it up.

So I told him to call his boss and tell him about it, because he's not going to get that signature of 1,65 -- what was it, 1,654?

Q 54. When you say he's not going to get that signature, what are you referring to?

A Because usually you don'g -- A lot of times you write down an amount if it has a lot of columns, if it has only one column, a number, you just sign that says that amount, that it says on the bill of lading, that's firm.

(Continued on next page.)

M. Worcberger-direct

Q So, in other words, when a truckman brings you a bill of lading, that corresponds with your count ----

A And has one count only, it has one item, one line.

Q Right.

A Then we sign for that, without any amount.

Q When you say you signed for it, you sign the bottom of the bill of lading and give it back to him?

A He has usually four copies.

Q And do you get a copy?

A I get a copy and the driver gets a copy.

Q And the driver's copy is assigned by you normally; is that correct?

A That's all signed at one time, and he gets a copy and I have a copy.

Q Did you sign the bill of lading for the first shipment on March 12th?

A No.

Q Why did you not sign it?

A As far as I recall, because it was only one piece of paper.

Q Are there occasions -- strike that.

Did you sign anything, any kind of a piece of paper that you gave to the driver on March 12th?

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M. Worcberger-direct

A Yes. We took -- I took our own bill of lading and made up the name, I think, and the some kind of amount on that particular -- Ididn't give, even, give him that amount.

Q You didn't give him an amount?

A No.

Q Why is that?

A Because he didn't like the way if I going to sign him short.

Q What did you mean by he didn't like --

A Because he was not the guy responsible for the shortage and he was afraid of shortage, because normally a driver would come in and he knows how much is put in there, and/or he's giving a letter and he doesn't like the way it was short.

Q What did he say to you concerning --

A I told him to call his boss and he went to the phone and dialed something, and then he said I can't reach him, he'll call you tomorrow morning.

Q What did he say then? Any further conversation about signing the bill of lading?

A Well, it said that the truck came here full and there was nothing missing, and I think I asked around. He told me when they opened it, it was straight, the boxes were, some opened; there was no reasonable shortage, so I signed it for one complete load.

Q Did you have any discussion with the driver as to whether you would put the number 1606 on any of the papers?

A No. We just, at the beginning, we wanted to do that and he didn't like it that way, so I did it this way to keep him clear.

Q Did you tell him to do anything concerning that shortage after he left?

A Yes, to tell his boss, to call me in the morning.

Q Did you receive a call from anyone purporting to be his boss?

A No.

Q Did you, at the time that you received the shipment on March 12th, were you told by anybody that more goods would be coming?

A No.

Q After the goods -- well, let me ask you this: How many pallets did you fill with that shipment on March 12th, if you recall?

A No, I can't recall.

Q Was it more than one?

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A Yes, it was more. It has to be more because it was straight job truck and it was, it would take -- it could take up to fifteen pallets.

Q Now with respect to thepallets that you filled up, would you fill up one pallet at a time or would you be filling up several pallets at the same time as you were loading down the truck?

A It depends when you open the truck what kind of item you find. If it's one item, you look at it, you start loading one pallet and you finish it to a certain height and then you take another pallet.

But if you're counting a few sizes or styles you have to work within a lot of time to have between five pallets.

Q So what you do then is you try to separate the various styles and sizes of boxes for different pallets?

A You have to, right.

Q What would happen if you didn't do that?

A If you didn't have to and the guy called you up the next week or sent somebody down to pick up, give me ten of this style, you'll have to dig for it.

Q In other words, you would have to dig through several pallets?

A Right.

M. Worcberger-direct

Q Do you remember whether or not you set up more than one pallet on the platform as the truckman, the truck on the 12th of March was being unloaded?

A I don't remember.

Q Do you remember whether you moved several filled pallets at one time from the loading platform to your fourth floor headquarters?

A It could be.

Q Now when you did get the pallet loaded with the goods, what did you do with them?

A When it was loaded, the procedure is to sign out and take it up.

Q When you say, "sign out," what do you mean?

A Sign the driver for the amount and then you take it up to the warehouse.

Q Did you sign the driver out for the full load before you took any of the palletized goods upstairs?

A Usually.

MR. CORCORAN: Can we have a date, your Honor?

MR. YOUTT: March 12th.

THE WITNESS: Usually.

Q Do you remember whether you did on March 12th?

A Probably not.

Q So you were moving some goods upstairs while

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you were unloading others?

A No; wait.

Q What I am asking is, when you signed out the driver --

A Right.

Q Were the off-loaded goods still on the platform or were they upstairs?

A They were probably on the platform because if not, they usually, they wouldn't sign them out.

Q Is there any reason why you leave them on the platform until the driver signs out?

A Yes. If there is a discrepancy, he can check it

Q When you signed out the driver, then what do you do with the goods?

A When I signed him out, the goods were taken upstairs.

Q Okay, and when the goods were taken upstairs, what was done with them?

A They're taken up to any floor I feel there's space that, you know, there is space there, or we try to accumulate all cosmetic type of items on one floor.

Q What floor was that?

A At that time, I think it was the 6th.

Q Did you consider razor blades cosmetic items?

A Not exactly.

Q Where did you take the razor blades?

A From the truck, I don't remember; I didn't take it.

Q Do you recall what was done -- well, once you receive a shipment of goods, do you do any kind of internal book work to report that receiving?

A Yes.

Q Would you describe generally what that book work is?

A The first procedure would be to take up the bill of lading and post it open, your lot book, that's the consecutive numbers, and you take the next number and put it on the bill of lading, to establish a lot number.

After that, when you are ready to bill, you take out a warehouse receipt and an invoice, and you make up an inventory control part for the item.

Q Who at your CBS warehouse is responsible for preparing these internal papers?

A At that time, there was -- I had a Mr. Freeman doing that.

Q Now, when you were, on March 12th -- strike that.

Does the person who prepared the internal

M. Worcberger-direct

papers come down and count the goods as they are on the loading dock?

A No, he stays in the office.

Q And he sits in the office at all times?

A Most of the time.

Q What does he use to prepare those documents? What kind of papers does he get?

A Well, usually in the end of the day everybody who handles everything would come up and he is supposed to have the one place, but we pull it from his pocket, with all other things that happen that day.

Q I'm sorry?

A He would put away during the day, he wouldn't run after every shipment is in.

Q And when you say, "he,"?

A Anybody that receives a shipment in our place.

Q What does a person who receives a shipment do?

A He counts the goods and he signs for it.

Q When he signs for it, are there occasions when he gets a bill of lading which doesn't describe every different designation and classification of goods?

A Yes, it happens.

Q It has a general description of so many cartons or something like that?

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M. Wercberger-direct

A The main thing is the number of cartons, that's usually on the bill.

Q Does that happen frequently?

A It happens.

Q When the bill of lading does not specifically list several lines of different classifications of cartons, but rather just a general number of cartons that are delivered, do you at the warehouse when you receive the goods, make any attempt to classify them by product numbers or size of boxes?

A We have to.

Q What did you do on the loading dock?

A At the loading dock we make up the -- we have every item separate, anyway, so we take up an item, we take the name and usually if it's any other description, we put it down and we say how much or one skid, let's say, and then you go to the next one, and if you see the same thing again, you count it up and you got all of the same items; you make one line, this particular item, so many cartons.

Q Where do you do the writing?

A Usually, you have to do it downstairs.

Q On what?

A On what you have.

Q You don't have any specific forms down there?

A Down there, no.

Q You write on a piece of paper that you have?

A Right.

Q Who is responsible for that, doing that, the person who receives the goods?

A Usually, yes.

Q Did you do that with respect to the shipment that you received on the 12th of March, 1975?

A I also did it.

Q What kind of paper did you use?

A I don't remember.

Q Did you give that paper to the man upstairs to prepare the internal documents with?

A I don't -- I usually won't give him that piece of paper because it's sloppy. I would give him, try to put it in our paper.

Q In other words --

A It's hard to read.

Q You make another draft of what you had prepared, the information you had gotten to the papers that is easier to read?

A Usually.

Q Did you do that in this particular instance on the 12th?

M. Wercberger-direct

A Well, on the 12th I don't remember if that, if I gave him that paper or re-wrote it.

Q But you gave him something?

A That's right.

Q And from that, he prepared the internal documents; is that correct?

A From that he has to prepare the documents.

Q How soon after the goods come in are the internal documents prepared?

A Usually the next morning.

MR. YOUTT: Your Honor, at this time I would like to mark a number of documents and I would also like to refer to those and I'm wondering if we could recess for a few minutes in order for me --

THE COURT: All right, we'll take a short recess.

(Recess taken.)

THE CLERK: Marked for identification, three documents marked Defendant's Exhibit A, A1 and A2 for identification.

Three documents marked Defendant's Exhibit B, B1 and B2 for identification.

Five documents marked Defendant's Exhibits C, C1 and C2, C3 and C4 for identification.

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Two documents marked D and D1. Two documents marked Defendant's Exhibit E and E1.

Two documents marked Defendant's Exhibit F and F1.

Two documents marked Defendant's Exhibit G and G1.

Two documents marked Defendant's Exhibits H and H1.

Two documents marked Defendant's Exhibits I and I1.

Two documents marked Defendant's Exhibits J and J1.

Two documents marked Defendant's Exhibits K and K1.

Two documents marked Defendant's Exhibit L, L1 and also L2 for identification.

Photograph marked Defendant's Exhibit M for identification.

Another photograph marked Defendant's Exhibit N for identification.

THE COURT: Are we ready to proceed?

MR. YOUTT: Yes, your Honor.

THE COURT: All right, seat the jury.

(Jury seated.)

THE COURT: Mr. Youtt.

BY MR. YOUTT:

Q Mr. Wercberger, when we recessed, we were still talking about the March 12th shipment. I am going to hand you some documents now, starting with Government's Exhibit 2, and ask you what that is?

A That was a company's --

THE COURT: Louder, please.

MR. YOUTT: So that the jury in the back can hear you.

A (Continuing) That came together with a shipment, a bill of lading showing the contents of the shipment.

THE COURT: Which shipment; the shipment that you received on March 12th?

THE WITNESS: Yes.

THE COURT: All right.

Q This is a bill of lading which came from the truckman on March 12th and was givento you; is that correct?

A Well, not necessarily to me, but given to us.

Q And how many packages does that report?

A This report, 1,654 cartons.

Q Did you sign that bill of lading?

A No.

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Q Now, I am handing you Government's Exhibit 2A, and I ask you what that is?

A That's a bill of lading signed for this shipment by me.

Q Now when you say that is a bill of lading, that is something which your company prepared?

A Yes, it has our name on it.

Q When was that prepared?

A At the end of the shipment.

Q When you say at the end of the shipment, at the end of the unloading process?

A Of the loading and counting.

Q Is that what you gave to the truckman?

A A copy of this, right.

Q Does that reflect a number of items, a number of cartons?

A No.

Q What does it say by way of description of the goods?

A It says, "one load, blank."

Q That is the document which you gave to the truckman when you asked him to call his boss to clarify the discrepancy in amounts?

A Right.

M. Wercberger-direct

Q Now, I'm handing you Government Exhibit 2D, and I ask you what is that -- excuse me, I withdraw that question.

I am now handing you Government's Exhibit 2E, and I ask you what that is?

A This is itemized of the products and their names, and the amount and in how many pallets.

Q Now when you say that is the itemized list of the products, you are referring to the products that were received in the shipped products on March 12th; is that right?

A Right.

Q And when you say, "itemized," what do you mean?

A It gives you how it's called. Like for instance, double-edged razor 36, and injector 72/15, and on and on.

Q Super 2 cartridge, Super 1 razor kit?

A Hot lather machine, and refills, lemon-lime.

Q Did you prepare that document?

A This, no.

Q Do you know who prepared it?

A It looks like from the office.

Q Someone in the office?

A Right.

Q Do you know where the information for that particular document came from?

A It came from me.

Q Where did you get it?

A I counted it myself.

Q Did the truckman give you any documents showing what was in the boxes?

A No.

Q How did you get the names, double-edged razor and injector and the other designations?

A It's outside on the cartons. It says on this.

Q And you counted the cartons then?

A Yes.

Q And you broke them down according to those descriptions?

A Right.

Q And what did that add up to?

A Total, 1,606.

Q Now I'm handing you Government's Exhibit 2D. Would you tell me what that is?

A This is called an inventory card, stating for, to keep inventory control on every item as it's taken out in order to balance.

Q All right, and who prepared that card?

A Well, it's typed. I didn't do it, the office did.

M. Wercberger-direct

Q Does that reflect the same number of items and the same description that is on Government's Exhibit 2E?

A Yes.

Q What is the purpose of that card?

A This card?

Q Yes, Government's Exhibit 2D.

A Inventory control.

Q What do you mean by inventory control?

A Well, the information you put on this card is as follows: You have to put down date received, that you know from when to charge them for monthly charges, if you want to charge them for cartons or for cubic foot or for skids, you make mark what it's charged for and then you say how much every item consists of.

Let's say particularly one here for 290 cartons. It consists of five skids, so you should know how to charge the skid rate.

Q Does that inventory card give information as to where the skids are located in the warehouse?

A It has here a box for location.

Q Is that location designated?

A On this particular card, it's not.

Q Do you know when that card was prepared

A To the best of my knowledge, it was prepared on the 13th, in the morning.

Q In the morning of the 13th?

A Right.

Q Was it already prepared at the time that the FBI arrived on the afternoon of the 13th? Isn't that correct?

A Yes, because I found it that way.

Q When the goods come in, are they assigned any kind of a lot number by your warehouse process?

A Yes.

Q Describe that.

A The lot number on this particular item is 631.

Q In other words, every quantity of goods of a lot number --

A Every transaction.

Q What do you mean by "every transaction"?

A Well, if a truckload brings in maybe a lot of items, so the whole thing comes under if it's one customer, it comes under one lot number.

Q What is the purpose of giving a lot number for your record-keeping purposes?

A Well, everything is recovered on that lot; the customer, if he wants something, he refers to the lot.

Q And when did you give a quantity of goods a lot number?

A As soon as the paper comes up from when they finish the load.

Q And do you write that lot number down some place?

A We have the lot book for that.

Q A lot book?

A Yes.

Q What is a lot book?

A A lot book is consecutive numbers and every day that something happens, you picked the next number that comes around; you put a name of a customer and next to it an amount of the total and then a date.

Q You write the lot number on the trucker's bill of lading?

A On the trucker's bill of lading, not usually.

Q Do you write the lot number on any papers that you receive from the trucker?

A Well, can you go back to the first question before?

Q Do you write the lot number on the trucker's bill of lading?

A You mean by that the paper, the bill of lading I got from the truckman?

Q Right.

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Q So, on your copy you write the lot number?

A Right.

Q So wouldyou look at Government's Exhibit 2 and tell us if it bears the lot number, the bill of lading you received for the Schick products on the 12th?

A Yes.

Q Is that 631; is that right?

A Yes, lot 631.

Q I'm handing you Government's Exhibit 2C; would you tell me what that is?

A This is a legal warehouse receipt.

Q What is the function of a warehouse receipt, again?

A It says on the bottom of this, this document is your contract of storage.

Q And is that prepared with information about the shipment you received on March 12th?

A Right.

Q Who prepared that, if you know?

A In the office.

Q It was not you?

A Right.

(continued next page)

Q Is this part of the preparation of paperwork that starts when you give them your piece of paper listing the merchandise received?

A When, when he's ready to do it, he does this.

Q And again, that was prepared before the FBI agents arrived on the 13th?

A On the 13th, right.

Q Now, with respect to that particular document, the warehouse receipt, is that a document that ultimately goes to the owner of the goods?

A First part, the first page; this is a four-page document.

Q And the first page is still there; is that correct?

A Right, the first page is supposed to go to the customer.

Q When you don't have the address of the customer, what do you do with that particular warehouse receipt?

A Well, you hold it.

Q Now I am handing you Government Exhibit 2B as in boy, and ask you what that is, it's a multiple exhibit, look at the other pages.

A This is the invoice for the goods and this goes

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together with the warehouse receipt on top of the white page, goes together with this to the customer.

Q To the customer?

A Right.

Q And that, again, was prepared on the morning of March 13th; is that correct, that you know of?

A Right.

Q What do you do with the copies of that invoice after it's prepared?

A Well, on this, the warehouse receipt, the white one goes to the customer, the yellow one goes in dead file, that consecutive numbers of the lots, the pink one goes to the customer's file and attached with the original bill of lading, and the next one.

Q And you make that distribution before you delivered the invoice to the customer himself; in other words, do you send a copy where they're supposed to go before you delivered the original?

A Well, normal procedure would be to take the two white copies, make up an envelope, and as you take off the white, you put together the yellows and then you take the pink and all in order.

Q What do you do with the white and the envelope when you don't have an address that you can send

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them to?

A You don't put them in the envelope, if you don't know where to send them.

Q Where do you put them?

A You put them on the side, like bills of lading that you didn't bill yet.

Q Did that happen frequently in your business in 1975, that you would have to put it aside and await learning the customer's address?

A It would happen on and off.

Q Now with respect to Government's Exhibit 2E, the listing of the written breakdown of the type of product, there are occasions, are there not, when a bill of lading from a truckman comes in with that kind of a breakdown; in other words, designating different types of products which arrive and the numbers of cartons of each, is that true?

A Yes.

Q When that happens, is it necessary for you to prepare a written account of how many different items you receive?

A No. The only thing what we do is on that piece of paper, if it says, we would try to put on the side how many pallets it was stacked, if it's palletized item.

Q And you would cross-check your numbers against the numbers that came on the truckman's bill of lading; is that correct?

A That number is put on the bill of lading from the truckman.

Q All right, but would you make your own count when you received the quantity of goods?

A You have to, if not, you cannot sign for it.

Q When you received a detailed bill of lading, did you also prepare your own notes as to what you received?

A Well, a lot of times we make a tally that's putting down this and this item on a skid, was so much and so much, and then you would attach it to it.

Q Now, does it happen frequently that you don't get the kind of detailed breakdown that you need on the truckman's bill of lading?

A Yes.

Q And back in 1975, I take it, that did happen periodically?

A Right.

Q And what kind of designation do you get from -- I mean, normally, when you receive a shipment, how are they designated on the bill of lading, cartons, or is it a particular description as to what they contain?

A Normally, a bill of lading would say only the trucker sends for his concern, the amount of cartons he is sending, you know, and then what he should normally have is a packing list in order to check off items as items come off.

Q Now I am handing you Government's Exhibit 11A, a photograph, and ask you: If you recognize that as the CBS warehouse?

A Yes.

Q That is the front of the CBS warehouse; is that correct?

A Right.

Q It has a sign on the front saying, "CBS Warehouse"?

A Right.

Q If I was driving down 50th St. to the foot of 50th St., could I see that sign?

A Yes.

Q And 50th St., then, would end at your building; is that right?

A If you go straight, you hit a platform.

Q At, on the other side of your building, immediately behind where we're looking in the photograph, ultimately is the New York Harbor; is that right?

A Right.

Q Now, is there a road that goes around that building?

A Yes, at 1st Avenue instead of going straight down, you can go around.

Q You are indicating now, if you were to come down toward the building and turn left, where as we're facing this picture?

A If I was --

Q There would be a road going around the building; is that right?

A Right.

Q I am handing you Defendant's Exhibit N for identification --

A Yes. By the way, you can go here to make a left, you can also go that way.

Q Tell me that again?

A This comes round and round and comes back.

Q In other words, the road circles the building; is that correct?

A This building and two other buildings.

Q The road goes around your building and then goes past two other buildings; would that be to the right of the photograph?

A Right.

Q And comes back around in front?

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A Yes, here about inside, near the platform.

Q There is no road between your building and the building on the right; is that correct?

A No.

Q You heard a building identified as the marine building in testimony in the past couple of days?

A Yes. That building would be on -- between 51st and 52nd St.

Q Let's look at this photograph, and tell me if the marine building would be to the right or to the left of the CBS building, as we're facing the photograph, Government's Exhibit 11A?

A It would be to the left.

THE COURT: All right, show an arrow indicating where the marine building would be.

THE WITNESS: It would be to this side.

THE COURT: Please make it a little firmer, press on it.

THE WITNESS: Here.

THE COURT: Put the marine building, so we know what the arrow is.

BY MR. YOUTT:

Q Now I am handing you Defendant's Exhibit N for identification. Would you tell me if you recognize what that

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is?

A That's a picture of the side of the building.

Q And when you say side of the building, which side of the building is that?

A The left side.

Q In other words, if we were to compare it with Government's Exhibit 11A --

A The other side road, that one you go round.

Q On the lower left-hand corner, then, of Defendant's Exhibit N for identification is the road which circles the building that you testified to before; is that correct?

A Right.

Q Is that a paved road?

A There was a lot of construction there. It's originally a paved road.

Q Now that particular road, was it in that general condition in March of 1975?

A Right.

Q Now I am handing you Defendant's Exhibit M for identification, and I ask you if you recognize that photograph?

A Yes. This is the back side of the building.

Q And when you say the back side of the building, it would be the opposite building of the side that we looked

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at in Government's Exhibit 11A?

A Yes, the opposite side of this left section.

Q Totally around in the back; is that right?

A Right.

Q If you were driving, you would go around the road in Defendant's Exhibit N, to the back of the building?

A Right.

Q And would you point out, is there an entrance which is shown there?

A Yes, an overhead door.

Q When you say "overhead door," are you referring to what appears to be a cylinder in the middle of the photograph?

A Right.

Q And there is a small van parked in front of that door; is that correct?

A Yes.

Q Partially obscuring the door?

A Yes.

Q Now is that the entrance which you were describing before which provided access to the CBS building?

A It provides access to the building.

Q And where is the CBS building in relation to the entrance in the middle of the photographs, Defendant's

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Exhibit M for identification, to the left or to the right?

A Could you repeat that?

Q Which is the CBS building? Can you see the CBS building here?

A It's this.

Q Indicating on the left of the photograph?

A Right.

Q Would you now place an arrow on the face of the photograph pointing to the CBS building, and under it print CBS?

Mr. Wercberger, did you purchase the Schick blades which you received on March 12, 1975?

A No.

Q Did you ever offer to purchase the Schick blades which you received on March 12, 1975?

A No.

Q At the time, or did you deal, did you purchase goods for your own account that you stored in the CBS warehouse?

A No.

Q Were you engaged in the business of a wholesaler or retailer of goods which you operated out of the CBS warehouse?

A No.

Q Directing your attention now to March 13, 1975, the following day: Did you receive a second shipment of Schick blades?

A Yes.

Q Did you expect that shipment prior to the time it arrived?

A No.

Q Did anyone inform you that it would or might be coming prior to the time it arrived?

A No.

Q Were you on the premises at the time that the second shipment arrived?

A I can't recall.

Q Did you, at some point, supervise the unloading of the March 13th shipment of Schick products?

A I was there at the time of the unloading and supervised same, as far as sorting goods.

Q Did the March 13th shipment come in more than one vehicle truck?

A There was a truck and two smaller vans.

Q Did they both arrive at the same time?

A I don't know that.

Q I don't remember whether you said you were there at the time that the first truck -- do you remember in

M. Wercberger-direct

which order they arrived?

A As far as I know, this one was started, was loaded; the bigger truck was loaded, before, unloaded before the two vans.

Q When you say loaded, you mean loaded down?

A I mean unloaded.

Q Okay. And were you on the premises at the time that the bigger truck arrived?

A I can't recall.

Q Do you know where the bigger truck was unloaded?

A At the platform.

Q Did you receive any documents in connection with the receipt of the Schick products on March 13, 1975?

A Not as far as I can remember.

Q You did not receive any documents from the truckman, correct?

A Right.

Q Had that happened before, that a truckman would arrive without shipping documents to your CBS warehouse?

A Yes.

Q On more than one occasion prior to March 13, 1975?

A Yes.

Q What did you do when those occasions arose in

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connection with your business?

A Well, on this occasion there was no problem because it looked like the same thing like the day before.

Q Now, all right. Did you have any general practice, I mean, would you receive goods and not give any documents?

A When -- would you repeat that?

Q You testified that on occasions a truckman would arrive without documents?

A Right.

Q Now when that happened at CBS warehouse, would you just take the goods in without giving any receipt in return?

A You have to give a receipt to the truckman to know what it would be.

Q What did you use as a receipt on those occasions?

A Yes, took our bill of lading.

Q Your bill of lading?

A Right.

Q Your bill of lading contained your name?

A Name and address.

Q And what would you do with those bills of lading?

A Well, you write down what came in and the name, he gives you for the shipment, that's about it.

Q Now, I'm handing you Government's Exhibit 3 which is in evidence, and ask you if you recognize that?

A Yes.

Q What is Government's Exhibit 3?

A This is a signature for the March 13th shipment.

Q And that is the CBS document, originally?

A Right.

Q And did you write in the name of a consignee?

A I wrote here, it reads like International Trucking.

Q Was that the name of the company that came, the day -- was that the name of the company which appeared on the bill of lading for the Schick shipment the day before?

A No, it was Trading.

Q Can you explain why you wrote International Trucking?

A Well, the man, the name was International and the Trading was, I may have wrote trucking instead of trading.

Q Is that a mistake on your part?

A Yes.

Q And what does it have by way of description of

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the goods?

A It says the amount of cartons, that's it, and three loads; one truck, two vans.

Q What does it have in the amount side?

A 3032.

Q And where does that figure come from?

A What I counted together on the dock, on the platform.

Q When you wrote "three loads on the face of that document, what did you mean? Does that refer to the number of loads that came in?

A Right.

Q And underneath that where you have "two vans and one" --

A One truck, two vans.

Q One truck and two vans, okay.

Now, did you sign that and give a copy to the truckdriver?

A Yes.

Q Was that the same truckdriver that had brought the shipment the day before; if you recall?

A Maybe it was one of the guys that was the day before.

Q But it was not the same truckdriver?

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A I can't recall.

Q Did you mention or discuss with anyone who participated in the second delivery, the fact that there was still a question open as to the quantity of cartons received in the first delivery?

A I don't remember.

Q After you received the second delivery -- strike that.

While you were unloading the truck, where were the vans, if you know?

A As I remember, they were on the side where the cars parked.

Q On the side of the parking lot where the cars parked?

A Right.

Q Can you see where the vans were as it is shown in Government's Exhibit 11A?

A Yes, you can see the location.

Q And that would be where?

A Right here.

Q Indicating the far left side of Government's Exhibit 11A where there are cars parked?

A Yes, and a small truck there.

Q And a small truck, you say?

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A The truck is there.

Q A jeep-type vehicle?

A Jeep.

Q Now, while those vans were parked in the parking area, did you have occasion to go out and look at them or look at the contents?

A Yes.

Q What was your purpose in doing so?

A To know, to get the whole shipment completed, assorted in all styles.

Q While you were looking at the contents, did you make a count of what was in the truck?

A I can't do that.

Q Did you attempt to find out what styles were in the truck?

A Yes.

Q Did you make any note at that time, the time you looked in the van?

A I don't think so.

Q After the truckwas unloaded, what happened to the vans? I take it they were pulled off and unloaded, also?

A Probably.

Q Were they both unloaded at the same time; do you recall?

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A I don't think I was there.

Q I didn't hear the answer.

A I don't think I was at the platform when the vans were unloaded.

Q Where were you at the time the vans were unloaded, if you recall?

A Can't recall.

Q Somewhere in the office or on the premises?

A I can't recall.

Q Did you come back to the platform before the drivers left?

A Yes, to count up the whole shipment.

Q When you say "to count up the whole shipment," was the whole shipment located in one place after the trucks were unloaded?

A Right on the platform.

Q On the platform?

A Right.

Q On pallets?

A Right.

Q How many pallets, if you remember?

A I don't.

Q Do you recall how long it took to unload the truck and two vans on the 13th?

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A Well, as far as to my knowledge, the truck came before noon and they left about three, quarter after three; something like that.

Q Now when you gave the truckman the document, the bill of lading prepared on your own bill of lading form, Government's Exhibit 3, you wrote down 3,032 c-a-r. That referred to cartons; I take it?

A Yes.

Q Is there any reason why you didn't write down a specific designation of the different brands and different model numbers and numbers of cartons of each, and put that on the bill of lading?

A No. I wouldn't do that on this because I had it on a piece of paper anyway.

Q You had written that down on a piece of paper?

A The amount and the items.

Q And I take it that, well, for what purpose had you written down the amount and the items; the same purpose you had done it the day before?

A Right.

Q Your internal record keeping?

A Right.

Q Is there any reason that you didn't copy it down on the bill of lading that you gave the truckman?

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A We don't do that.

Q Why didn't you do that back in March?

A It's not necessary.

Q Why is it not necessary?

A Because the only thing the driver is concerned is an amount of cartons.

Q That document goes back to the owner of the goods, doesn't it?

A Right.

Q And the owner of the goods ultimately presents that to you in order to claim the goods, does he not?

A Right.

Q All right.

So the owner of the goods is going to be better off if he has a complete description of the styles of items that were delivered?

A Well, if he wants it that way he should have sent it made up and tell me to sign for that.

Q Now, I am handing you Government's Exhibit 13 and I ask you: Can you recognize that?

A Yes.

Q What is Government's Exhibit 13?

A Which side?

Q The side with the exhibit sticker on it.

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A That's the breakdown of amounts of razor blades and other things.

Q What is the other side; let's start with that.

A Well, the other side of the piece of paper releasing goods to a customer. How many.

Q Does that piece of paper on the other side have anything to do with the Schick razor blades that were received on the 13th?

A No, no.

Q Is that a piece of scrap paper, then?

A Yes.

Q Turn it back to the side that you wrote in about the Schick items. Did you turn that piece of paper, the Schick information over to your internal office?

A I don't think so.

Q What did you do with it when you prepared it? I take it, it's in your handwriting, correct?

A Yes.

Q And we're talking principally about the top half of that particular document; is that correct?

A Yes.

Q Now, you prepared that on the loading dock?

A Yes.

Q And what did you do with it after you prepared it?

A Well, I was supposed to take it upstairs.

Q Some of these numbers, let's say there is three columns, a column in the left-hand side of numbers; what is that column?

A It's probably the pack, how it's packed, how it's packed.

Q 36?

A 36.

Q Slash 4; is that the way it's packed?

A It's the marking probably outside on the carton.

Q Then you have a note, Schick twin injector?

A That's what it says on the carton.

Q Then a number, 891?

A That's amount.

Q Amount of cartons?

A Right, for this particular style.

Q And 6 pal?

A It was on six pallets.

(continued next page)

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Q So that would tell you then there was this type of Schick Injector boxes, the 36's, 891 boxes and 6 pallets?

A Right.

Q And you went down the list of each different type like that?

A Right.

Q And, now the number of boxes column which is in the right hand middle of the page, it appears does it not, that some of the numbers are changed and scratched out, doesn't it?

A Yes, sir.

Q Did you make those scratch outs and changes?

A It looks like it.

Q Why did you do it, if you remember?

A Well, the pallets were probably strewn about the platform and it's not necessary every time together, like you know, the top it's 6 skids, 6 skids may not be all 6 together.

So, you start going from taking one item and trying to find the next skid, that has the same item and I usually do that. It was probably on another piece of paper before I got those totals.

Q So you made a number of changes on that

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particular piece of paper?

A Probably I found it on half skids, there was an amount let's say one skid finishes off and you got another 5 or 6 cartons left. You're not going to make a special skid for that, so you combine a few others that you cannot fit on a skid together, so that's probably why the numbers were changed.

Q Do you remember whether you made that listing before or after the truckman left?

A I would do this before they left, to sign.

Q Would you, is it possible you made some of those changes in numbers after you left, based upon recounts or discovery of other items that you didn't see?

A It could happen; I don't remember.

Q Now, after you prepared that particular scratch piece of paper, do you remember what you did with it?

A With the paper?

Q Yes.

A No.

Q Do you remember whether you put it in your pocket as you have testimony?

A Well, if they found it there, I probably put it there.

Q You were down to the main floor platform when

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you finished writing that, I take it?

A Right.

Q What would you -- Had it not been removed from your pocket in connection with this case, what would you have done with that particular piece of paper in the ordinary course of business?

A I would take it up to the office and give it to the bookkeeper there to make up the bill, but I had in mind at that time to combine the two and erase those.

Q To combine those, what do you mean by that?

A Well, there was a lot of items in both shipments that were the same thing.

Q And so what did you have in mind doing?

A Instead of setting up two sets of inventory carts, which is hard to take, you know, it's more convenient to have the one cart.

Q For purposes of finding the papers and documents and locating the goods later?

A No. The main purpose is to keep track of inventory.

Q Okay. So you had in mind that you might combine the two shipments into one set of internal papers?

A Right.

Q Had you known on March 12th there would be

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more goods coming on March the 13th, what would you have done or ordered your employees to do concerning the preparation of internal documents?

A Well, there would be no preparation of documents.

Q Why is that?

A Because it shouldn't go through the same thing two times for the same customer.

Q So you would have instructed them to wait until all the goods were in, made into a single lot and single set of papers?

A Yes.

Q Did you purchase the Schick products which were delivered to you on March the 13th for your own account?

A No.

Q Did you participate in the purchase of those Schick products for the account or on behalf of the CBS Warehouse or anyone else?

A No.

Q After the load had been received on the platform on March the 13th, do you remember whether that load was -- Let me withdraw the question. Do you remember whether the load which was received on March the 13th was all on the platform at the time the truckman left on March

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the 13th?

A Well, I don't know the time they left, or by the time I signed for it, everything was still there.

Q And the time you signed for it, the trucks were all unloaded; is that correct?

A Right.

Q And you made the count of the pallets on the platform; is that correct?

A Right.

Q Incidentally, is that platform used by other people in the building?

A Yes, the other companies.

Q How many other companies are there in the building?

A One more company.

Q One more company?

A Right.

Q Are there other companies in the neighborhood, warehouses?

A Well, the next building is also for warehousing and the third one afterwards, more warehousing.

Q In March of 1975, were they or, or were there a number of active businesses within the area of the one block area of your warehouse?

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A Yes.

Q On March the 15th, March the 13th of 1975, were there other trucks loading or unloading at the platform of the CBS Warehouse?

A Probably.

Q Do you know whether you, the CBS Warehouse, received or released any merchandise to trucks on March the 13th?

A I was told there was a shipment that day.

Q How about March the 12th?

A I don't remember.

Q Do you know whether there were other trucks at the platform at the time of the delivery of Schick products on March the 13th, delivering to the other tenants in the building?

A Well, let's put it this way; you can rarely find that platform empty.

Q Was that the same conditions the day before, on March the 12th?

A Probably.

Q And it would be, when you say you can rarely find it empty, that would be because there are trucks either loading or unloading?

A Or just standing there.

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Q From a number of places, to either you or other tenants?

A Right.

Q Now, after the unloading to the platform was completed, did you participate in or supervise the removal of the pallets of goods from the platform to the fourth floor?

A I can't recall. I don't think so.

Q Do you know whether or not those goods were moved from the platform up to the CBS Warehouse?

A They had to.

Q How do you know that?

A Because the goods have to go up in the warehouse.

Q You later saw them in the warehouse, did you not?

A Yes.

Q Do you recall where you were on the premises when the FBI agents arrived sometime shortly after the arrival of the goods on March 13th?

A No.

Q When did you arrive back at the warehouse?

A You want a time?

Q Approximately.

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A About 4:30, something like that.

Q At that time, were the FBI agents there?

A Yes.

Q And at that time, were you interviewed by the FBI agents?

A Yes.

Q Who interviewed you; if you recall?

A There was a Pat.

Q Colgan?

A Right.

Q And anybody else?

A Yes, and a Dowd.

Q Agent Dowd?

A Right, and Good.

Q Good?

A Right.

Q Were there other agents on the premises?

A Yes, there was a bunch of them.

Q Now I'm going to direct your attention back a couple of months from March the 13th, 1975 to some time in early February, 1975, and I'm going to ask you, if you recall receiving a shipment of Whitehall products and/or Anacin?

A Yes.

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Q When was that, if you recall?

A What date?

Q Yes?

A I don't remember.

Q Now, I'm handing you Government's Exhibit 6, and ask you: If you recognize that?

A Yes.

Q What is that?

A That's a shipment from Whitehall Labs to A. Perez, San Paolo, Brazil.

Q Is that a document which you received in connection with your receipt of the Whitehall products in February of 1975?

A Yes.

Q What is the date on that document?

A 2-1.

Q Would that be the day of delivery or the day of the shipment from some other place?

A Well, our date is 2-3.

Q Does that have a listing of the number and designation of the goods on it; does Government Exhibit 6 have a breakdown of the number of cartons which were delivered, a description of some kind of the type of goods that you received?

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A Yes, a clear description.

Q It differs from some of these other exhibits, in that there was a specific breakdown of the product designations; is that correct?

A Right.

Q Now, with respect to that shipment, did you sign the bill of lading when you received the goods?

A This, no.

Q Do you know whether you signed the truckman's receipt that you gave to the truckman?

A Well, I don't think so. I didn't sign anything as far as this shipment is concerned.

Q Is there a signature on that document?

A Yes.

Q Can you recognize whose signature that is?

A It looks like Fisher.

Q Who is Fisher?

A He was an employee at our company.

Q Now, did there come a time in February, approximately February 4th when you were visited by an agent of the FBI concerning, or inquiring about the Whitehall Anacin shipment?

A Yes.

Q Do you recall who that agent was?

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A I remember one, Pat.

Q Again, Mister, Agent Colgan?

A Right.

Q And when he arrived, did you speak with him?

A Yes. He came in and picked up the inter com and said, "CBS", and because you couldn't come up to our place, we should have to go down after you.

Q Because of the elevator?

A Yes.

Q Was there a stairway access on the upper floors?

A There is, but it's locked.

Q It's not usable by people in the building?

A They, usable for people in the building but not from outside.

Q Could you come down those stairs?

A Yes.

Q And get out, with a lock; I mean with a key?

A From inside, yes.

Q So, you came down to meet Agent Colgan yourself?

A I was there.

Q Did you speak with him about the Whitehall shipment on February the 4th?

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A Well, he asked me if I had Anacin.

Q He asked you if you had Anacin?

A Right.

Q When had you received Anacin prior to his arrival?

A I don't recall.

Q Would it be about the same day or a day before, or several weeks before?

A Couldn't have been weeks before because I would have known about it.

Q Did you have any knowledge as to whether you had Anacin at that time?

A I had no knowledge at that time, at all.

Q Did you inquire of others whether or not there was any Anacin shipment received?

A At what time?

Q When Agent Colgan came?

A I think that I didn't, there anybody to ask --

Q Well, did you subsequently, did you later learn that you had gotten a shipment of Anacin very recently?

A Yes, when I saw it.

Q How, where did you see it?

A He came in and told me, he asked me if I had Anacin and I told him, "I don't think so, but if you want to feel good, I'll take you upstairs."

And, I take him upstairs, first to the top floor, the 6th floor and we walked down, I think he had other agents with him probably, and the agent said, "That's it."

Q What did you do then?

A Nothing.

Q Did you later show him any documents in connection with that shipment?

A Yes. He asked me, "Where is the paper for this?" I went down in the office and asked the guys in the office where the paper is, he showed me I knew where he was using this bill of lading, and he showed it to me and I showed it to Pat.

Q Agent Colgan?

A Right.

Q And after you did that, did you have any conversation with Agent Colgan about that shipment?

A Yes. He said that something is wrong with the shipment, and he's going to take it.

Q What did you say to him in reponse to that information?

A I told him, "You can't take it".

Q For what reason did you give him?

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A What?

Q What reason did you give him, if any?

A I gave him a simple reason; he had no right to take it.

Q What did you sayabout it, what you would ask him to do about releasing the goods?

A First off, all we had, we had a problem. I told him somebody has to pay for the labor.

Q What labor?

A For take it upstairs and unloading.

Q In other words, the receiving charge and storage charges?

A Right.

Q And did you make arrangements for him to return with adequate documentation to authorize the taking of the goods?

A Yes. He says he has to take it out and I told him you can't because what's going to happen if the owner comes and asks for it, what am I going to show for it.

So, he signed on top of something, his name and his number something, I don't remember what he did and he says this will be good enough and I told him, "Listen", and he says he has to take it out today. So I told him, "You can take it, but only if you promise me you're going to

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give me legal documents that you have it."

Q Did he later return with legal documents?

A Yes. I think the next day.

Q And the goods were removed by the Federal Bureau of Investigation?

A Before the same day he was there.

Q On the promise that he would return with legal documents?

A Right.

Q Which he did?

A Right.

Q During that conversation, did you have any discussion with Agent Colgan about the shipping documents that you turned over to him?

A No. Just asked me if I knew the consignee.

Q And what did you say?

A I said, "I don't".

Q Did he ask you about the description of the people that delivered the goods?

A He couldn't, I wasn't there.

Q Did he ask anybody in your company about the description of the people who delivered the goods, to your knowledge?

A Yes, he did. I think Fisher, he asked about

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that.

Q Mr. Fisher?

A Right.

Q The man that signed the document that that was received?

A Right.

Q Did you purchase that quantity of Anacin from anyone?

A No.

Q Did you, on behalf of the CBS Warehouse, engage in any activity to purchase that quantity of Anacin?

A No.

Q So, as far as you know, whatwas that Anacin doing in your warehouse on February the 4th, 1975?

A It was there to be stored.

MR. YOUTT: Your Honor, I've reached the point where I think I'm going to turn to a different subject and I wonder if this wouldn't be an appropriate time to break for the noon recess.

THE COURT: Well, all right. We'll resume at 2 o'clock.

(Luncheon recess was taken.)

THE COURT: Mr. Corcoran?

MR. CORCORAN: Yes, sir?

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I had a lapse of memory. Mr. Youtt, you asked for time?

MR. YOUTT: Yes, your Honor. I would like to distribute to the jury for their review, a number of these documents we were speaking of this morning. I wonder if we can take a few moments to do that now.

THE COURT: Distribute which?

MR. YOUTT: First of all, the documents concerning the receipt of goods on March the 12th?

THE COURT: What exhibit numbers?

MR. YOUTT: Government's Exhibits 2A and 2, 2 and 2A.

THE COURT: We have copies of those two, so we can distribute 2, but I don't believe we have copies of the the others, do we?

MR. YOUTT: Rather than distribute, I mean to pass it out among the jury.

THE COURT: All right. Give it to the foreman.

MR. YOUTT: And Government's Exhibits 2 and 2A, shipping documents in connection with a receipt on March the 12th.

THE COURT: Okay. Can you proceed while they're looking?

MR. YOUTT: Well, I would like to also pass

M. Wercberger-direct

among the jury the several documents that we were discussing in groups, based upon the time and place where they were prepared.

Now, Government's Exhibits 2C, 2B, 2E and 2D, the internal documents prepared by the CBS Warehouse in connection with the March 12th shipment.

THE COURT: I want to make certain that the documents given to the jury are marked in evidence, that's all.

MR. YOUTT: And then, finally, Government's Exhibit 13 marked in evidence, and 3 marked in evidence, document 1 being the receipt, the receipt document which was given to the driver on March 13th and the other being the note made on March 13th about the March 13th shipment.

THE COURT: All right, the jury has them.

MR. YOUTT: At this time, I would offer into evidence Defendant's Exhibits M and N.

MR. CORCORAN: I have no objection to N, your Honor. I would object to Government's Exhibit M in evidence.

THE COURT: May I see it? Does this picture, Defendant's Exhibit M for identification, fairly and accurately represent the portion of the premises depicted on the photographs?

THE WITNESS: Yes.

THE COURT: It does. All right, the objection is overruled. It may be marked.

THE CLERK: Government's Exhibit M and N previously marked for identification now marked in evidence.

DIRECT EXAMINATION (CONTINUING)

BY MR. YOUTT:

Q Mr. Wercberger --

THE COURT: Did you want that to go to the jury, too?

MR. YOUTT: Not necessarily, at this time.

THE COURT: All right.

Q Mr. Wercberger, at the time that the Schick shipment was received on March the 13th, did you know that the goods in that shipment were stolen?

A No.

Q At the time that the Schick shipment arrived on March the 12th, 1975, did you know that the goods in that shipment were stolen?

A No.

Q And, with respect to the Anacin and Whitehall products, when you first saw them in your warehouse, did you know that those goods were stolen?

A No.

Q Now, this morning Mr. Wercberger, you testified that on numerous occasions you received goods with shipping documents, in which the address of the consignee or the ultimate owner of the goods is not listed. Did you testify to that?

A Yes.

Q You also testified that on occasions you received documents from shippers and from ultimate consignees in which the product descriptions are generally set forth rather than specifically designated as to product type?

A Yes.

(Continued on next page.)

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[illegible] Wercberger-direct

Q D[illegible] also testify this morning that on the occasions you prepared a receipt form for truckers and shippers in which the product designations and descriptions are varying, such as so many cartons without describing the content of those cartons?

A Yes.

Q And you also testified this morning, that on occasions when the trucker arrived with a shipping document, you prepared on a CBS form, a bill of lading or of receipt for that trucker?

A Yes.

Q And at my request, have you gone through some of the files of the CBS files in order to retrieve representative samples of those kinds of problems with other customers and other shipments?

A Yes.

Q Now, with respect to the CBS Warehouse documents, I take it -- well, you testified this morning did you not, that the CBS Warehouse is no longer an active business; is that correct?

A You didn't ask me that.

Q Is the CBS Warehouse an active business at this time?

A No.

Mor Wercberger-direct

Q Is CBS Warehouse still located in the building that's been depicted in Government's Exhibit 11-A?

A No.

Q Are the records of the CBS Warehouse preserved or kept intact somewhere?

A Yes.

Q Who has the custody of those records at the present time?

A We do.

Q And, are you one of the custodians of those records?

A Yes.

Q And at my request, did you go through those records and obtain some of them and bring them to the Court here today?

A Yes.

Q Would you look at what has been previously marked, marked Government -- I'm sorry, Defendant's Exhibit D and as a series of exhibits appearing after that, B, B-1 and B-2, C, C-1 and C-2, C-3 and C-4, D, D-1, E, E-1, F, F-1, G, G-1, H, H-1, I, I-1, J, J-1, K, K-1, L, L-1, L-2?

A Yes.

Q Do you have those documents in front of you now, all of the ones I have listed?

A Approximately, approximate, yes.

Q Were those particular -- are those regular business documents and entries and records which were made in the ordinary course of your business at CBS Warehouse?

A Yes.

Q Now, some of those documents were prepared by you at the CBS Warehouse or somebody at the CBS Warehouse; is that correct?

A Yes.

Q Specifically referring to -- let's take for example, Defendant's Exhibit B for identification, a warehouse receipt form?

A Yes, that's my receipt.

Q Now, with respect to those documents that were prepared by the CBS Warehouse, were they prepared at or about the time the transactions that they reported were made?

A Could you repeat that?

Q Were those documents with respect to the documents in the exhibits for identification, which I have listed to you, were the ones whichwere prepared by the CBS Warehouse prepared at about the time when the transactions that they provide information about were made?

A No.

Q When were --

Mor Wercberger-direct

A About the time.

Q In respect to the documents tat were not prepared by the CBS Warehouse, in other words bill of lading received from truckers, were those documents received at about the time the shipment that they designate were received?

A It came together with a shipment.

Q Okay. Now, are those documents, was it the regular practice of the business of CBS Warehouse to keep those documents in order to do business?

A Yes.

Q Now, the documents which you have brought, I take it that you have brought those records to Court today; is that correct?

A Yes.

Q The documents which you have brought, do they represent, are they representative samples of some of the types of problems that we've just discussed today, that no address on the consignee, vague product descriptions, use of CBS replacement documents?

A Yes.

Q Haveyou gone through those documents and can you tell me which, if any of them represent instances in which you received shipping documents from the shipper in which the address of the consignee was not listed?

I believe you've done that before. Have you made a list of those particular instances?

A Yes. It would be A, B-2, C-1, C-3, C-4, D, E, F, G, G-1, H, I, J, L-1.

Q All right. Would you take the first of the ones that you listed, Exhibit A?

A Yes.

Q Now, Exhibit A is attached by staple to some other exhibit, is it not?

A Yes.

Q And what are those exhibits, and by number, just tell me their numbers. Exhibit A?

A Exhibit A is the Warehouse receipt.

Q What is attached to it?

A To it, attached is Exhibit A-1.

Q All right. Were those attached together in your records when you retrieved them?

A Yes.

Q What was the significance, if any, of their being attached together?

A To show how this thing came in.

Q With respect to exhibit, when you say to show how this thing came in, does the stapled together items reflect one --

A Package deal.

Q Quantity of goods?

A Right.

Q And the documents that related to the quantity of goods are all stapled together; is that right?

A Right.

Q Now, if you will look at Exhibit A-1 and tell us what that is.

A That's a copy of the bill of lading of the delivery.

Q And who is the shipper in Exhibit A-1?

A The trucker or shipper?

Q The trucker is who?

A The trucker is Shuster Express.

Q What is the date on that shipment?

A 9/27/73.

Q Where did that shipment originate, if you can tell that from that document?

A Leggett, Pennsylvania.

Q What was the name of the company, if any, that was listed as the original shipping party?

A Warner-Lambert Company.

Q That's the Warner-Lambert, that's the Schick Company?

A That is, yes.

Q Do those reflect shipped products?

A This particular, no.

Q Now, Warner Lambert then, according to that document, shipped via the shipper that you indicated; who is the consignee?

A It doesn't say.

Q Is there any name of a consignee?

A It says -- yes, consignee is CBS Warehouse, Building 58, Bush Terminal, 50th Street, Brooklyn.

Q Did CBS Warehouse purchase the goods from Warner Lambert?

A No.

Q I take it they belong to someone else; is that correct?

A Yes.

Q At the time that you received the goods reflected in Exhibit A-1, did you know who they belonged to?

A Can't recall.

Q Did you learn at some point who they belonged to?

A Yes.

Q How can you tell that from the document in front of you?

A Because it says the name, that was billed to.

Q What name was it billed to?

A Sulfer Distributors.

Q And you are looking now on Exhibit A, which is the warehouse receipt, prepared by CBS Warehouse; is that correct?

A Right.

Q When was Exhibit A prepared?

A After shipment came in. When, I don't know.

Q Is there a date on it?

A No, the date reflects the shipment.

Q The day of the shipment?

A Wait; let me see it. Says October 3.

Q What is the date of receipt of shipment from the shipper's papers?

A It says 9/27.

Q So from that --

A And it probably came in October 3rd.

Q When, if you remember, and if you don't please tell us, when did you learn, were you able to put the pink sheet, Exhibit A, with the shipper's bill of lading, Exhibit 1-A?

A When we found out who the consignee is.

Q And how in the ordinary course of your business do you find out when it's not specified?

A Well, normally it would be somebody calling beforehand or after a while when he gets a bill from the company, and I thought he's going to call me and he didn't, and he calls me if I have the goods.

Q Is Exhibit A-1 the bill of lading signed by anyone at CBS?

A Exhibit A.

Q A-1?

A A-1; I don't see any signature on it.

Q But your normal procedure would be to sign the copy that goes to the truckman; is that correct?

A Right. It's signed on the top and it must go through the carbons, which at the time maybe there was no carbons.

Q Now was it unusual that no consignee whatsoever was designated; I mean that no consignee other than the CBS Warehouse was designated?

A No.

Q That happens on more than one occasion in the past?

A Yes.

Q And on those occasions you wait to hear from the consignee in order to identify the goods with the actual owner of them?

A Yes.

MR. YOUTT: Your HOnor, I offer Exhibits A, A-1 and A-2 in evidence.

THE COURT: Any objection?

MR. CORCORAN: May I see them?

THE COURT: Surely. Do you intend to offer all the documents?

MR. YOUTT: I intend to, I would like to offer them as one --

THE COURT: Look at all of them then. Let's save some time.

MR. CORCORAN: I have no objection.

THE COURT: Then they can be marked.

THE CLERK: Defendant's Exhibit A, A-1, B, B-2, C, C-1, C-2, C-3, C-4, D, D-1, E, E-1, F, F-1, G, G-1, H, H-1, I, I-1, J, J-1, K, K-1, L, L-1, and L-2 previously marked for identification are now marked in evidence.

MR. YOUTT: May I distribute Exhibit A, A-1 and A-2 to the jury?

THE COURT: Sure. And if you want them to review the rest, I think you ought to give them all to the jury.

MR. YOUTT: I can certainly do it. I was going to ask him about various documents, about certain amounts and when I'm finished I can hand them to the jury and then go onto the next one.

THE COURT: Sure.

Q I hand you the exhibits now which are in evidence, Mr. Wercberger, and I believe you indicated that Exhibit B-2 was also an example of the situation in which the consignee listed on a bill of lading has no address listed; is that correct?

A Yes.

Q Who is the consignee on that particular bill of lading?

A Olympic Import Company.

Q And what is the date on that bill of lading?

A 7/19/73.

Q Ultimately, did you prepare a warehouse service sheet which is Exhibit B; is that correct?

A Yes.

Q And ultimately, I take it that these goods were, in fact, delivered to Olympic Import Company?

A Yes.

Q How did you, if you did, learn the address of the Olympic Import Company at some future time, at any time after you received the bill of lading?

A I don't remember the exact circumstances, but it was found out that we sent it.

Q Can I have Exhibit B again, I would like to circulate it among the jury.

I believe you also indicated with respect to Exhibit C-1, that the consignee is not indicated on that particular bill of lading; is that correct?

A The address.

Q Who is the consignee on that particular bill of lading?

A Clair Ampex.

Q It says on it, does it not, CBS Warehouse, SFB?

A No, it's CBS Warehouse/ --

Q Tell us what that means?

A On account, usually we say.

Q On account of Clair Ampex?

A Clair Ampex.

THE COURT: I'm not sure you're speaking loud enough or clear enough for the jury to hear it. I'm having difficulty and I'm only about four or five feet from him.

If you want the jury to hear everything you have to say, you'll have to speak louder.

Q Is the address listed for Clair Ampex?

A No.

Q Would you look at Exhibit C-3, also attached to that group of papers; that also is a bill of lading or shipping order?

A A bill of lading.

Q And thatis something which would have been received from Bob's Trucking Company?

A Yes.

Q Along with the shipment, 86 cases of yarn?

A Yes.

Q Is there an address listed on that particular document?

A No.

Q Now, with respect to this document, Mr. Wercberger Wercberger reference to the 86 cases of yarn, that also is an example of a vague product description which I asked you to bring?

A Yes, because it doesn't specify any styles or any carton numbers, or anything at all.

Q All right. And, when you received that, who would prepare that; is that something prepared by you or is that something prepared by the original shipper?

A Well, it's supposed to be prepared by the original shipper, and if it's not, we try to make some kind of notations so we should know what's what.

Q In other words, you would have made a more complete breakdown for purposes of your internal records of those 86 cases of yarn?

A Well, if they would tell me that they would take it out, as picking from the 86 let's say two or three cartons, which it seems this piece of paper that they said they're going to pick up the 86 at one time.

Q And this particular document is signed by someone on the lower righthand side of it; is that correct?

A Yes.

Q Is that somebody in your company?

A Right.

Q And that would have been signed and given to the truckman when he delivered the goods,correct?

A Yes.

Q Now would you look at the next page, Exhibit C-4?

A Yes.

Q Now, Exhibit C-4 is also Clair Ampex; is that correct?

A Yes, that is it.

Q That is the ultimate consignee?

A Yes.

Q There is no address of Clair Ampex there, is there?

A No.

Q Now Exhibit C-4 is also an exhibit of a vague product description; is it not?

A Yes.

Q What does it say?

A Sixty cartons yarn.

Q Is there any further breakdown beyond that?

A No.

Q And Exhibit C-4 is an example also of the use of the CBS Warehouse document instead of a document from the shipper; is that correct?

A Yes.

Q Now, that would be done in the case when the truckman arrives without the proper papers?

A Without papers.

Q Without papers, at all?

A Right.

Q Would you take a CBS Warehouse document such as Exhibit C-4 in this case, you cross out the CBS Warehouse designation?

A Yes.

Q And wrote in "From Clair Ampac"; is that right?

M. Wercberger-direct

A Right.

Q And instead of them signing a bill of lading from the truckman, which you didn't get, you signed that and gave that to the truckman; correct?

A Right.

Q So that Exhibit C-4 then is a threefold example, a vague product description, no address to the consignee and the use of the CBS Warehouse form instead of the original bill of lading?

A Yes.

MR. YOUTT: Again, I would like to circulate this exhibit to the jury. (Hands to the jury.)

Q Let's go on to Exhibit D, specifically Exhibit D-1; what is Exhibit D-1?

A That's the bill of lading.

Q And it's from the Interstate Folding Company?

A That's the trucker.

Q Is the shipper indicated on that?

A Yes.

Q Who?

A Lenman & Kemp, Westwood, New Jersey.

Q Is the ultimate consignee indicated?

A Consigned to the -- it says CBS Warehouse.

Q Were they goods you had purchased?

A No.

Q Were they goods that had been sent to the CBS Warehouse by a consignee, someone else?

A Yes.

Q Did you later learn who that consignee was?

A Yes.

Q Who was that consignee?

A B&S Cosmetics.

Q There is a word written in on Exhibit D-1 above CBS Warehouse, it's in rough handwriting; it says B-R-O-D-T?

A Yes, that was the speculated company.

Q That's who somebody at CBS thought the goods belonged to?

A Right.

Q It turned out that they belonged to the B&S Company?

A Right.

Q And when you found out who they belonged to, you were able to deliver the goods and the warehouse receipt, which is Exhibit D?

A Right.

Q With respect to the product designation --

A No, wait, excuse me. THis bill was sent to the guy that we thought it was, and --

Q You thought Brodt?

A Right, and he called us up and said it was not his, and then was forwarded to the other company.

Q B&S?

A Right.

Q Okay. So that's why on Exhibit D the warehouse receipt, the word Brodt which is typed in is crossed out and B&S is penciled; is that correct?

A Right.

Q That was done by somebody at CBS?

A Right.

Q Do you know for?

A Yes; it seems the office did it.

Q Now, look again at Exhibit D-1, D-1 also gives you an example of a vague product description, does it not?

A Yes.

Q In the typed portion of Exhibit D-1, that was prepared by the shippers; is that correct?

A Interstate Forwarding Company.

Q What does that say?

A Articles and numbers; it says 812 six/12 cartons.

Q Anything else?

A Yes. Something down B/654, and that's weight.

M. Wercberger-direct

Q There is no further description as to what the contents of those cartons were, is there?

A No.

Q Or any further description of what they looked like?

A No.

Q Now, written in besides that is the words, "Sforsa Water"; was that prepared or written in by somebody at CBS Warehouse?

A Yes.

Q Can you explain how that got there?

A How that got there?

Q Yes.

A When the goods came in and they wanted to receive it, they had to put some kind of a name on it, so the office would know what to bill for what the item was.

Q So that's something which somebody from your office put there to more fully describe --

A Probably not the office, the guy that received the goods.

Q And there's also a lot number on that particular document also?

A Right.

MR. YOUTT: Again, I'm handing Exhibit D to the foreman of the jury to circulate.

Q With respect to Exhibit E, I believe you also indicated that Exhibit E was a consignee with no address listed?

A E has an address.

Q E has an address of the shipper; is that correct?

A Yes.

Q Does it have an address of the consignee?

A Probably the same guy.

Q Who is the consignee listed here?

A Consignee says "CBS Warehouse."

Q In particular, on this document also, this is an example of a vague product description, is it not?

A It says, "Twelve cartons, piecegoods."

Q This again is a bill of lading, number of packages, 12 cartons, PC?

A Piecegoods.

Q G-O-G-D, is goods, right?

A Right.

Q And that's signed, that bill of lading is signed by someone at the CBS Warehouse?

A Right.

Q The date being 11/20/1974?

A Right.

MR. YOUTT: I'm now giving Exhibit E, handing it to the jury,and E-1.

Q Now, with respect to Exhibit F, would you look at that please?

A Yes.

Q What is Exhibit F?

A It's our own stationary, CBS Warehouse bill of lading,and it's from ABC Chocolate to ABC Chocolate at the address, put in afterwards.

Q The address then being 943 39th Street?

A Yes, that was after the shipment came in.

Q The dateof this particular document is 9/10/74?

A Right.

Q And at the time when you received the goods, did you know the address of the ABC Chocolate Company?

A Seems not.

Q Now, this document also indicates the quantity of packages, 200, and then I see, what is TSW?

A CTN. is cartons.

Q Any further product description?

A No. Just the six pallets, that's on skids, six skids.

Q This being ABC's bill of lading, with the CBS

Warehouse crossed out; I take it this is the situation where the shipper did not have his own documents?

A The trucker didn't have no documents.

Q And you signed then or someone at CBS Warehouse signed on 9/10/74 for 200 cartons?

A Right.

Q Can you tell us, from this, what kind of cartons they were?

A Not from the bill of lading, but from the receipts, it says --

Q What does the receipt say?

A Two hundred cartons, shortening.

Q And that's Exhibit F-1?

A Right.

MR. YOUTT: I'm handing Exhibit F and F-1 to members of the jury.

Q We'll now go to Exhibit G-1. What is Exhibit G-1?

A 1-G is a warehouse receipt.

Q And the account name is ABC Chocolate, correct?

A Yes.

Q It lists 300 packages of coffee powder?

A Bags, right.

Q If you go to Exhibit G, Exhibit G is the original bill of lading; is that correct?

A Yes.

Q Now, that is also an ABC Chocolate written in, on an ABC Warehouse bill of lading; correct?

A Yes.

Q CBS Warehouse is crossed out and ABC Chocolate is written in?

A Yes.

Q Dated 12-19-75?

A Right.

Q And it designated the product as 300/50 cocoa powder?

A Right.

Q What lot number written in?

A 894.

Q And there's a name, a signature on it, is there not?

A Yes.

Q This one I can read; it says "David Schwart?"

A Yes.

Q Is that an employee?

A Yes, at that time.

MR. YOUTT: I'm handing Exhibits G and G-1 to the jury.

Q Exhibit H, Mr. Wercberger --

A Yes.

Q -- this is also a CBS Warehouse form?

A Yes.

Q With the name, "Avon Bag Company" written in?

A Yes.

Q This would indicate another situation in which shipping documents were not received from the actual shipper or owner of the goods?

A Yes.

Q And there is an address listed there, yes, it says 64 Kingston Avenue?

A Yes.

Q Now, the designation as to what you were receiving, 716 packages and then, what did you say it says?

A The numbers.

Q Well, it says "CPN;" is that correct?

A That's carton.

Q Any further designation or description of the type of cartons in that shipment?

A No.

Q What is the 15/17 that comes after that, if you know?

A That's the charge, storage 15 per piece, per month, and 17 handling in and out charges.

(Continued next page)

M. Wercberger-direct

Q If you look now at Exhibit 81, the designation of the product is again, 10-16, but the word typed in is "handbags"; is that correct?

A Yes.

Q I take it, then, somebody, based on your numerical record purposes, designated the contents or the cartons to contain handbags; is that correct?

A That's Avon Bag Company, that's why --

Q That's the way they were listed on the inventory cards of your company?

A Yes.

Q So that information is not contained on the bill of lading?

A No.

MR. YOUTT: I am again handing this to the jury.

Q Exhibit I, Mr. Wercberger, indicates this is a bill of lading which originated from the Newport Sales, Incorporated?

A Yes.

Q Consigned to whom?

A CBS Warehouse.

Q Were they goods purchased by the CBS Warehouse?

A No.

Q Again, this was generally a designation as to where the warehouse was located, but not the identity of the ultimate owner of the goods?

A Yes.

Q And is there any name or address of the ultimate owner on that particular document?

A No name, no address.

Q And this document, then, would have been prepared by the trucking company or the shipper?

A Or the shipper.

Q And in this particular document, there is a detailed breakdown as to the type of product; is that right?

A Yes.

Q The type of detailed breakdown that you do for your own internal purposes; is that correct?

A Yes.

Q That indicates the spray, suntan and suntan cream and other lotions; is that correct?

A Yes.

Q So you were able to prepare your warehouse receipt, Exhibit Il, from those designations; is that correct?

A Yes.

Q Also on the face of this particular document, there is something that's printed down below; is that correct, what is that?

A Contents, unknown.

Q Contents of what?

A These specify here, for instance, spray suntan, 500 dozen, and the cartons outside didn't specify, it wasn't the original cartons, so we could not sign for this kind of breakdown.

Q So you wrote in "contents unknown"?

A Right.

MR. YOUTT: I am handing to the jury Exhibits I and I-1, for identification.

Q Exhibit J, again that indicates the consignee to be the CBS Warehouse on the face of the bill of lading; correct?

A Yes.

Q From Around the World Merchandisers?

A Yes.

Q And is there any address from Around the World Merchandisers?

A No.

Q You received these and held them until someone got in touch with you as the owner, correct?

A Yes.

M. Wercberger-direct

Q Who was the owner in this particular --

A C&S Cosmetics.

Q You know C&S Cosmetics, that is written in in hand on the face of the bill of lading, it is not under the designation route?

A Yes, it was done after.

Q Do you recall whether it was done by anyone at CBS Warehouse?

A Well, it looks pretty close like my handwriting.

Q So that was written in not by the shipper or trucker, but somebody, possibly you or probably you at the CBS Warehouse?

A Yes.

Q To indicate you had learned who the goods really belonged to?

A Yes.

Q So, when you prepared the warehouse receipt, it shows the B&S Cosmetics, correct?

A Yes.

Q Now, in this particular instance there is a fairly complete designation of the types of products which were delivered; correct?

A Well, it says, "men's sets."

Q 500 dozen men's sets?

A Yes.

Q And in 500 cartons?

A Yes.

MR. YOUTT: I am handing Exhibits J and J-1 to members of the jury.

Q Now, would you look at Exhibit K? Exhibit K, is use of the CBS Warehouse receipt -- I'm sorry, ACB is the bill of lading with the name CBS crossed out and the word Brodt & Company written in; is that correct?

A Yes.

Q Again, indicating that Brodt & Company did not have, or bring its own documents and elect to use instead documents prepared by you?

A Yes.

Q Who is the consignee listed there?

A Consigned to CBS Warehouse.

Q And the route?

A And the route is Teresa.

Q Does that indicate now, to say that information, who the actual owner of those goods was or the ultimate consignee?

A Yes.

Q Who was that?

A Teresa.

Q When you then prepared the warehouse receipt, Exhibit K-1, it indicates Teresa Merchandising Company?

A Merchandising Company.

Q As being the consignee; is that correct?

A Yes.

Q And you used that Exhibit K-1 for billing purposes in order to collect the storage charges?

A Yes.

Q Again, with respect to Exhibit K, the bill of lading; it is a fairly detailed statement as to the types of goods which were delivered, breaking them down into various different categories, correct?

A Yes.

MR. YOUTT: I am now handing Exhibits K and K-1 to members of the jury.

Q Exhibits L, L-1 and L-2; would you look at Exhibit L-1?

This is a bill of lading prepared, originating from the Interstate Forwarding Company?

A Yes.

Q Indicating again, that the shipper to be Lenman andKemp Barclay Co.?

A That's right.

Q And consigned to the CBS Warehouse; correct?

A Yes.

Q Were you the ultimate consignee on that particular transaction?

A No.

Q The date being on the 6th, the 6th of 1975; did you later learn who the ultimate consignee was?

A Yes.

Q Who did you learn that it was?

A C&S.

Q And when you prepared your house receipt for purposes of billing storage charges, S&B is listed in fact; is that correct?

A Yes.

Q Now, the description of the articles delivered on Exhibit L-1 is 207 with a zero slashed out and 1 apparently placed over it; is that correct?

A Yes.

Q And then cartons, toilet preparations?

A Yes.

Q Then when your bill or warehouse receipts again indicates Florida Water; is that correct?

A Yes.

Q Where did that change in designation come about as a result of your own internal examination of the boxes that were received?

A Yes.

MR. YOUTT: I show Exhibits L, L-1 and L-2 to members of the jury.

Q Mr. Wercberger, the exhibit group that we have just gone through, does that represent all of the instances in which either a consignee did not list his address, or was a vague product description, or the use of the ABC replacement documents?

A No.

Q Are there other instances in which that has occurred in your business?

A Yes.

Q And when I asked you to obtain representative samples, is that what you did?

A You told me you needed ten.

Q You didn't attempt to obtain all of the instances in which that happened; is that correct?

A Right.

MR. YOUTT: I have no further questions at this time.

THE COURT: Mr. Corcoran?

CROSS-EXAMINATION

BY MR. CORCORAN:

Q Mr. Wercberger, you're in the warehouse business, or you were in March of 1975; isn't that correct?

A Yes.

Q And you told us that you're a public warehouseman, that is, you said that anyone can come in and store products in your warehouse for any period of time; is that correct?

A The public warehouse, the word means -- excuse me, that you don't store your own goods.

Q You store for people who wish to use your services?

A That's right.

Q You have the building and they have the products, and they can store their products in your building?

A Yes.

Q Essentially, you're a baler, you're not -- do you know what the term baler means?

A No, sir.

Q People give you their products to hold and you have to return them; isn't that correct?

A Yes.

Q It's according to the role you told us you play?

A Yes.

Q Those goods aren't yours to keep?

A Well, there is a lien if he don't pay.

Q If he doesn't pay, but in the ordinary course of business, your role is what it is you said, it is here today, you are merely holding goods temporarily?

A Well, it would depend when they pick it up.

Q In fact, you're liable to return to the person giving you the goods exactly what you received; isn't that correct?

A Yes.

Q If you get a thousand cases of Schick products, toothpaste, hair tonic, whatever, you have to return a thousand cases; isn't that correct?

A Yes.

Q You don't get a commission; you're not allowed to keep so many cases?

A No.

Q So that if you don't have the right number of cases when the owner of the product comes, you have to pay him for the loss; is that correct?

A That's right.

Q You're liable and you're a businessman; isn't that correct?

A Yes.

Q I assume then, that the count of the product is very important to you, the number of products you receive, the number of products you're liable for; it's important, isn't it?

A We try our best.

Q Now, will you explain to us how this service works? You said that you received goods from the street, from anyone that wants to store it.

How does the person deposit the goods? How does he get them back?

A Well, normal procedure would be to set up, somebody would call me up if we go down solicit business, we know the guy, we send him quotation of prices and then he sends in merchandise, and we normally -- he should send us in beforehand from his company an expectancy, means we should expect the goods and the goods come in.

Then he asks, he sends us a piece of paper that he wants out of this, and we ship them to him, he wants it.

Q That's the normal situation?

A Right, that's supposed to be.

Q In the normal situation, when a man wants to retrieve his goods from you, he has to present documentation, doesn't he?

A If I don't know him yet.

Q Otherwise, you just release the goods?

A If I knew him, I would.

Q But if you don't know him, he needs documentation?

A Some kind.

Q You wouldn't release the goods to the wrong person, because then you would be liable to the rightful owner?

A Right.

Q The documentation is important in your business?

A If, if I can get it.

Q If you can't get it, would you release the goods to someone you didn't know without documentation?

A No. If I never knew them.

Q You'd never do that, would you?

A Right.

Q You'd be liable for the goods?

A If the right guy comes around, yes.

Q So that the normal situation, a man has to have paperwork before you release any goods to him?

A Yes.

Q And the paperwork has to be accurate; isn't that correct?

A Well, presumably the only guy knows that the goods came in, he would show his business card, it would do.

Q Well, this paperwork is important to two parties, isn't it? To the persons whose goods you have, and also to you, who is liable for those goods.

Let me put it to you this way, Mr. Wercberger: If there's a conflict in the paperwork as to the number of cartons in your warehouse, someone loses; isn't that correct?

A Yes, insurance company.

Q Did you tell us before you had no insurance?

A Yes, negligence; we don't offer --

Q Do you have insurance to cover all your losses?

A We have insurance if I cannot prove what these are insured.

Q But it is important to you, that you don't have to rely on --

A It's not good for the record.

Q It's not good for business?

A Right.

Q So in the ordinary course of business, the paperwork that comes in with the goods you're receiving, has an accurate count of the products coming in; isn't that correct?

A Accurate. The main thing is being accurate count of total shipment.

Q Paperwork going out of your premises with the truck delivery is going to be accurate; isn't it?

A Yes.

Q Because that indicates how much you are liable for; isn't that correct?

A Correct.

Q And if you sign a piece of paper which indicates you accepted 2,000 cartons, and you only had 1,500, you'd suffer a loss; isn't that correct?

A If I signed for 1,500.

Q You signed for 2,000, and you only have 1,500; you're liable for the 2,000; isn't that correct?

A What was the original number, 35?

Q Well, assuming a man comes in with a quantity of goods; he leaves his goods with you and you give him a document and you sign 2,000 cartons.

A Right.

Q When he returns with that document, how many cartons do you have to give him?

A 2,000.

Q And if you don't have the 2,000?

A Well, I have to pay for it.

Q You suffer the loss; isn't that correct?

A . . Yes.

Q So you make sure the count is accurate? Don't you, Mr. Wercberger?

A Right.

Q In the ordinary course of business?

A Right.

Q Were you acting as a warehouseman?

A Right.

Q Let's consider the shipment you discussed earlier with your attorney, the March 12th shipment of Schick shaving products.

You indicated that you were expecting some razors from Teresa?

A Yes.

Q And on March 12th, lo and behold, a shipment of razors arrived; isn't that correct?

A Right.

Q And you told us that you didn't like the order, the order that they were in and you called Teresa and you found out that it was not the Teresa shipment you were expecting; isn't that correct?

A Right.

Q So that you had on your doorstep, on your loading platform, a quantity of products you were not expecting isn't that correct?

A Right.

Q According to your testimony. And you accepted those products on March 12, 1975; didn't you?

A Yes.

Q And you told us that you didn't know International Trading Company prior to that date; isn't that correct?

A Yes.

Q But you accepted a quantity of Schick shaving products based upon this document, Government's Exhibit 2; is that what your testimony is, Mr. Wercberger?

A Yes.

Q That document came in with a truckdriver; is that correct?

A Yes.

Q And it indicates how many cartons of Schick shaving products?

A 1,654.

Q Assuming nothing happened on the 13th of March --

THE COURT: Referring to Exhibit number?

MR. CORCORAN: Exhibit 2.

THE WITNESS: What?

THE COURT: I'm just saying that for the record.

Q 1,654 cartons, according to the bill of lading, Government's Exhibit 2; assuming nothing happened in or on March 13th, which I believe you testified to, you didn't expect any further shipments.

What were you liable to International Trading Company for on March 12th?

A Well, there is no signature for that.

Q There is no signature?

A No.

Q But that is the bill of lading?

A Yes.

Q What would International Trading Company present to you to secure their Schick shaving products?

A A signature from their company.

Q Is that Government's Exhibit 2A?

A In this instance, yes.

Q Tell us, according to that document, how many cartons of Schick shaving products you were allegedly liable to International Trading Company on March 12, 1975?

A Actually, nothing.

Q Nothing?

A No.

Q You are not liable for the 1,654, according to your testimony?

A No.

Q Are you liable for one load?

A Yes, and then you can argue how much.

Q You can argue. Is it your testimony that the truckdriver was perfectly satisfied with the figure, "one load"?

A Yes.

Q Wouldn't you have been in a little better position in that argument, Mr. Wercberger, had you indicated on the paper, 1,606?

A Could you repeat that?

Q Well, you said that you'd have to argue over how many you'd be liable for, you couldn't limit that argument, but by putting on the correct number, wouldn't you, 1,606 according to your testimony?

A It would be easier.

Q But you decided to make it easier for the truckdriver; is that what you're telling us?

A No. I could not sign that for another reason, anyway.

Q You were absorbing a 48-carton loss in that case, Mr. Wercberger?

A No.

M. Wercberger-cross

Q You heard testimony by Warner Lambert, that this was a $400,000 shipment, didn't you?

A Yes.

Q 48 cartons would be a fraction of that. Have you figured out how much that loss would be, Mr. Wercberger?

A I don't look at shipments that way.

Q But you determined that it was your best interest to put one load on this document?

A It's warehouse. A lot of times we do that. Even, let's say if the driver has say, to go away, and he left you the truck.

Q I'm sorry?

A If somebody brings me a load, a full load and I open the trailer truck and it's full, I can sign for one full load and the customer will have to take usually my word for it, what was in there.

Q The customer would take your word for it?

A Right.

Q And if you only gave him that 300 cartons, he'd have to take your word for it?

A That's right, that's why he gave me business.

Do you sign your business work that way often?

Q A lot of times it happens, right.

Q A lot of times you take in on a notation, one load; is that correct?

A Right.

Q Now, the following day, you said you received a second shipment of razor blades?

A Yes.

Q March 13th; no question about that, the blades came in on March 13th?

A No.

Q And you knew at that time, as you knew it the day before, this wasn't from Teresa Company; isn't that correct?

A Right.

Q It was from someone else?

A Right.

Q Was it International Trading or International Trucking, Mr. Wercberger?

A International Trading.

Q Do you know of any documentation to show that?

A No.

Q In fact, that's the only documentation you have for the Schick shaving products that came in on the 13th of March? Isn't that correct?

A Yes.

Q Three loads?

M. Wercberger-cross

A No, 3,032 cartons.

Q 3,032 cartons?

A Right.

Q Three loads?

A Right.

Q International Trucking?

A Well, trucking, maybe.

Q As far as you are concerned, that was International Trading, it made no difference?

A Right.

Q Since they were Schick shaving products, you could lump them all into one load, isn't that what you told us earlier?

A No, I didn't say that. I said one of the guys that came on the 13th was one of the same guys that came on the 12th with the same products. So, we put it together.

(continued next page)

S. Wercberger - cross

Q Mr. Wercberger, we assumed or -- withdrawn.

Didn't you assume that these shipments were from the Schick company?

A They only started coming from --

Q The first bill of lading you allegedly received on the 12th, was from the Schick company; was it not?

A Yes.

Q So it wasn't unusual for a Schick company truck delivery to be delivering goods for different consigness, would it?

A Could you repeat that?

Q The Schick company truck driver could have delivered a shipment of goods for International Trading on one day and International Trucking on the other, and still be the same truck driver, wouldn't it?

A Yes.

Q But, you assumed, you could just lump these together even though the documents you had indicated different consignees?

A There was no documents.

Q This is a document, isn't it, Mr. Wercberger?

A This was, I wrote.

Q This is a document that you were going to rely on, and that the consigneee, consignor was going to rely on?

A The signature and the amount of cartons the consigneee is going to rely on that.

Q What about the man that delivered the goods to your warehouse; what was he to rely on?

A On the copy of this.

Q That's the only document, isn't it?

A That's right.

Q Consigned to International Trucking?

A Well, it says a mistake.

Q You just considered these fringable goods?

A I don't know the word.

Q Is that 3,032 cases on the 13th of March an accurate count?

A Supposed to be.

Q Did you count it?

A I personally did, what was on the platform.

Q In fact, you signed for it; is that correct?

A Right.

Q Was it 1,606 the day before, was that an accurate count?

A I presume so.

Q Accuracy is important, isn't it, when your reliability is on the line?

A Yes.

Q You know how to add, don't you, Mr. Wercberger?

A A little bit.

Q It's your business, isn't it, Mr. Wercberger?

A Yes, we do it with a machine usually.

Q Would you add up for us the figures, 1,606 and 3,032?

A Three what?

Q 3,032.

A 3,032.

Q According to Government's exhibit 3?

A Yes.

Q And 1,606.

A Yes.

Q According to your internal documents?

A Yes.

Q What's the total?

A 4,638.

Q 4,638?

A Right.

Q Would you add up the figures 3,032 and 1,654?

A Okay.

Q What's the total?

A 4,686.

Q 4,686, and the other one was?

A 4,638.

Q And those are the only figures available, according to all the documents concerned, aren't they; 3,032, 1,066, 1064?

MR. YOUTT: Objection, which documents, counsellor

THE COURT: Sustained as to form.

Q According to the bill of lading that you have and the receipts that you gave, those were the figures involved on March 12th and March 13th, those represented the Schick shaving products received by you; isn't that correct?

A That would summarize the shipment, right, as to this amount.

Q And you either received 4,686 or 4,638?

A It has to be 4,638.

Q Mr. Wercberger, do you want to tell us how the SBI and Time DC Trucking Company removed 5,072 cartons of these stolen Schick products from your warehouse on March 13, 1975?

A What was the number?

Q 5,072.

A 5,000; whose count is that?

Q Did you hear the testimony of the DC representative, Frank Walsch?

A Yes, I didn't take it down.

S. Wercberger - cross

Q If I tell you that the figure was that he said, came out of your warehouse, was 5,072, and if I tell you that that was corroborated by the SBLI's testimony --

A Yes, I'd probably have to take it.

Q Would you explain to us, Mr. Wercberger --

A No, I can't.

Q In fact, you had 400 more cartons than were indicated by the documents that you testified to here today; isn't that correct?

A Seems so.

Q 400 cartons of the shipment of 6,900 is less than ten per cent, it's only about five percent, isn't it?

A Well --

Q Six thousand nine hundred; ten percent would be 690, 400 cartons is a little less than say five percent. Do you know what five percent of $400,000 is?

A Where does the $400,000 figure come in?

Q The cost of this load to Schick.

A Was $400,000?

Q Do you know what five per cent of $400,000 is?

A No. Tell me.

Q Why don't you figure it out?

A I don't know how.

Q If I tell you it's $20,000, would you explain to

S. Wercberger - cross

us how you came up with 400 more cartons than your paperwork represents?

A Well, it could be explained if it isn't right.

Q What's not right, Mr. Wercberger?

A It's not right, it shouldn't have happened.

Q I would agree with you there, sir.

THE COURT: Strike that out. The jury will disregard it. I'm referring to Mr. Corcoran's remarks.

Q Mr. Wercberger, when Patrick Colgan , Agent Colgan, entered your warehouse on March 13th, he was not unknown to you; was he; you had seen him before, hadn't you?

A Yes.

Q Approximately five weeks earlier in February of 1975?

A Yes.

Q And when you had seen him at that time, he had been to your warehouse with regards to a Whitehall Laboratory products shipment; isn't that correct?

A Yes.

Q And at that time, he removed a quantity of Whitehall Laboratory products from your warehouse, didn't he?

A Yes.

Q And he told you at that time that they were stolen products, didn't he?

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A I don't think so.

Q He didn't tell you that; you were unaware in February of 1975 that the products removed were stolen products, is that your testimony?

A I really don't think he said that.

Q Did you think it strange that he removed a quantity of products?

A He said he had to take it away.

Q He didn't tell you why?

A Why, I don't recall, no.

Q Did he tell you any of your constitutional rights at that time?

A No.

Q Did he tell you you had a right to demand a search warrant?

A No.

Q But you knew that the quantity of goods was removed from your premises by the FBI on February 5, 1975?

A Yes, because I told him to.

Q And with that, the FBI took a copy of that document, didn't they?

A Yes.

MR. YOUTT: Indicating?

MR. CORCORAN: Government's exhibit 10.

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THE WITNESS: 6

MR. CORCORAN: 6, I'm sorry.

Q That's a standard form bill of lading, isn't it, Mr. Wercberger?

A Yes.

Q No company name on it?

A No.

Q Don't you find that most large corporations have bills of lading with their own company's names on them?

A Well, usually.

Q Do you find, generally, large reputable corporations using standard form bills of lading in business?

A Probably.

Q You saw another standard form bill of lading five weeks later with the first shipment of Schick products, didn't you?

A Yes.

Q Did you notice the similarity in handwriting?

A No.

Q Didn't notice anything?

A No.

Q You didn't think it strange that the Schick Corporation used standard form bills of lading, purchasable in an office supply store?

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S. Wercberger - cross

A It didn't look so obvious just to me at that time.

Q You testified, Mr. Wercberger, that Government's exhibit 13, the list you made on March 13, 1975 --

A Yes.

Q From that list, you told us that you were going to prepare your internal documentation; is that correct?

A Well, I was supposed to, right.

Q Would you tell us why you folded that list and put it not inside your pocket, but inside your wallet on March 13, 1975?

A I wouldn't know.

Q Can you tell us who Davrio is, Mr. Wercberger?

A The name is Dario.

Q Who is that?

A Who this is; this is a -- who works in a bank, in my bank.

Q What bank is that, Mr. Wercberger?

A Banker's Trust.

Q Where is it located?

A On 13th Avenue, 44th, 45th Street.

Q What does Mr. Dario have to do with this Schick shaving product load?

A I called him probably at that time.

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S. Wercberger - cross

Q With regard to this shipment?

A No.

Q Did you attempt to call anybody with regards to this shipment?

A This particular shipment?

Q Yes.

A No.

Q On the 13th of March?

A I don't think so.

Q You said Teresa Merchandising Corporation had nothing to do with these razor products; is that correct?

A No, as far as my knowledge, no.

Q And you discovered that on the 12th of March when the first shipment was on your platform?

A Right.

Q It was a mere coincidence that this list was written on the back of a Teresa Merchandising List?

A Yes.

Q That was coincidence?

A Yes.

Q And you would have removed it from your wallet sometime and made out your internal documentation?

A I would have gone to look for it. Because if I have to make up papers.

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S. Wercberger - cross

Q Did you tell the FBI on March 13, 1975, that you originally thought the shipment was coming in from Teresa?

A I don't think so.

Q You never mentioned Teresa to the FBI that day, did you?

A No, they mentioned to me.

Q So you accepted on March 12, 1975, 1,606 cartons on paperwork representing 1,654; is that correct?

A How is that again?

Q On March 12, 1975, you received 1,606 cartons of Schick products on paperwork that indicated 1,654?

A Well, the paperwork, after we find another number, that paperwork doesn't mean anything.

Q And on March 13th, you testified that you received some 3,500 cartons of paperwork that indicated 3032 cartons?

A Come again?

Q Well, if you 5,072, you got 400 more cartons than you should have on the 13th, that you were short on the 12th; you must have gotten all 400 extra on the 13th?

A (No response.)

Q Is that true?

A Would you repeat that?

Q Withdrawn.

Q You testified earlier, Mr. Wercberger, that these documents were representative of the types of problems you have here; isn't that correct?

A Yes.

Q Would you go through defendant's exhibit A through L, and show me one set of documents pertaining to one shipment where the designation on your paper is one load or two loads or three loads, rather than a specific carton number?

A I can show you that, not between these.

Q Excuse me?

A I can show you, not between these.

Q You have other documents, but you didn't bring them with you?

A (No response.)

Q Would you go through the documents and indicate where any of them indicate one load as opposed to cartons?

A Well, I have one here with no signature at all.

Q I'm not asking you about the signature, Mr. Wercberger, I'm asking you where no carton designation is, but merely a designation "load", where you accepted a quantity of goods with no carton designation.

A Within this document, no.

Q And those are the representative documents that you produced here today?

A Now, yes.

Q Mr. Wercberger, after Agent Colgan removed the Whitehall products from your warehouse on February 4th, February 5, 1975, did the alleged owner of those products ever come for it and demand them from you?

A No.

Q Nobody ever presented the original of this document, and said, "Give me those Anacin tablets?"

A No.

Q Did anybody ever call your warehouse to obtain those goods?

A Not to my knowledge.

THE COURT: You referred to Anacin tablets; is that what you intended to say?

MR. CORCORAN: The Whitehall products, Anacin was the major product.

THE COURT: All right.

Q And after Agent Colgan and Agent Dowd and Agent Pecoraro removed the stolen Schick shaving products from your warehouse on March 13, 1975, did the alleged owners of those products ever come forward and ask you to return them to them?

A No.

Q Did any body from International Trading Company ever come forth and ask you for 1,606 cartons?

A No.

Q Or 1,654?

A No.

Q Or 3032?

THE COURT: Mr. Corcoran, you are saying stolen products, but I say to the jury that one of the issues that is before you. You are going to have to determine whether the products were stolen from interstate commerce.

I'd rather you refer to it as Schick products and leave it to the jury to decide if the products were stolen.

MR. CORCORAN: Yes, sir.

Q No one ever came for it and asked for those products, did they, Mr. Wercberger?

A No.

MR. CORCORAN: Thank you, I have no further questions.

THE COURT: do you have any redirect?

MR. YOUTT: I do, your Honor.

REDIRECT EXAMINATION

BY MR. YOUTT:

Q THE CLERK: Document marked as defendant's

I for identification.

Q Mr. Wercberger, I hand you what's been marked as defendant's exhibit I for identification and I ask you if you recognize that?

A Yes.

Q What is that?

A That's a bill of lading.

Q A copy of a bill of lading?

A Yes.

Q Is that something which you also retrieved from the files of CBS Warehouse Company?

A Yes.

Q And that's among the files that are kept in the ordinary -- were kept in the ordinary course of CBS Warehouse business, just as the other exhibits, A through L?

A Yes.

Q And it's something that you got from those files and brought down in your custody to the courthouse here today?

A Yes.

Q Now, who is the shipper in that particular bill of lading?

A Well, it says, "David Trivitch, Jewish Guild, Shapecraft."

Q Shapecraft is what, the consigneee?

A No. It looks like the shipper.

Q Is there a consignee listed?

A International Distribution Service.

Q What's the date on that particular bill of lading?

A 2/17/75.

Q Does that describe the products that you received?

A No.

Q What is in the description section of that particular bill of lading?

A One trailer load of miscellaneous.

Q And the I-S-S?

A Right.

Q Would that be, M-I-S-C for miscellaneous?

A It's probably miscellaneous.

Q Is there any further product description on that particular bill of lading?

A No.

MR. YOUTT: I offer this as defendant's exhibit I in evidence, your Honor.

THE COURT: Show it to Mr. Corcoran.

MR. CORCORAN: I have no objection.

THE COURT: Let it be marked.

THE CLERK: Defendant's exhibit I for identification, previously marked, is now in evidence.

MR. YOUTT: I'll circulate this among the jury.

THE COURT: Give it to the foreman.

Q Were there any occasions, Mr. Wercberger, in which you received goods under bills of lading saying "one trailer load," or "one truck load," similar to this exhibit?

A Well, not miscellaneous ones. One truck load or one full load.

Q Well, Mr. Wercberger, there has been some testimony about the identification of shippers and the various bills of lading.

Is it in the ordinary course of your business as a warehouseman, was it a major concern of yours who the shipper of the goods was?

A No.

Q In the ordinary course of buisness, did you have any contact with the shipper of goods that you received?

A Mostly never.

Q Your main interest was in the consignee?

A Consigneee.

Q Is that correct?

A Yes.

Q The consigneee is the one that calls you and asks for the goods?

A Right.

Q And the consigneee is the one that had to pay you or settle up with you for the storage charges before he picked up the goods; is that correct?

A Yes.

Q The shipper didn't pay for those goods, did he?

A No.

Q So, did it matter to you who the shipper was in those instances?

A No way.

Q Now, with respect to Government's exhibit 13, the list which you pencilled or penned in of the products received on March 13, 1975. Did you total those, that list up

A No.

Q There was no total listed; is that correct?

A No.

Q And you testified earlier that you had made some changes, some before while the shipment was coming in and some after the trucker left; is that correct?

A Well, there have been some changes here.

Q It is in the numbers?

A Right.

Q And you never had a chance to total that figure up; is that correct?

A No, if not I would have totalled it.

Q So that figure -- strike that.

And you would have totalled it up, had you not, before the intervention of the FBI agents at, shortly after you received that shipment; is that correct?

A Well, the office would have done it.

Q Okay, and if there had been --

A Excuse me. I totalled it downstairs, probably, and that's it.

Q I didn't hear you.

A Repeat the question, please.

Q There is no total that appears on the piece of paper; is that correct?

A No.

Q And you didn't total that piece of paper before the truckman left?

A This paper, no.

Q If there had been a discrepancy between your receipt of goods between the receipt which you signed and gave to the truckman, and it later, the later tally when you made it, would you have corrected that to the account of the consignee?

A Yes.

S. Wercberger - redirect

Q And make the necessary changes in your internal documentation; is that correct?

A Yes.

Q Is it a fair statement to say that you considered it a question of the quantity of goods received, the Schick products, an open question, since you hadn't settled on the matter of the discrepancy of the day before?

MR. CORCORAN: I'll object.

THE COURT: I'll allow it. It's on the question of intent.

THE WITNESS: repeat the question?

MR. YOUTT: Can we have it read back?

(Question read.)

THE COURT: Do you understand the question?

THE WITNESS: No.

THE COURT: rephrase it, please.

Q The day before, when you received the Schick products, you didn't send the bill of lading with the 1,654 cartons listed; correct?

A Yes.

Q And you didn't sign that because you didn't agree with that figure; is that correct?

A Right.

Q You told the truckman to have his boss call you;

is that correct?

A Yes.

Q And you gave him a blank, or not a blank, but a receipt which didn't have the number of cartons received listed on it; is that correct?

A Yes.

Q And that's the receipt that you signed; is that correct?

A Yes.

Q Okay. The next day you received the quantity of Schick products and you signed a receipt and gave it to the truckman; correct?

A Yes.

Q At that time, did you consider the question of the quantity of the total Schick products you received, one that was open or closed?

A Well, normally, if I sign that, it would actually close it.

Q But it still remained for you to talk with someone about the discrepancy in the numbers from the date before; is that correct?

A Right.

Q Do you know Mr. Jimmy Santo, who has been referred to in testimony by Government witnesses in this trial?

A No.

Q Do you know a Stanley Diamond?

A No.

Q Do you know a Mannie Gomez?

A No.

Q Do you know a witness, the Frank Joseph Maloney?

A No.

Q Now, with respect to the shipping documents on March the 12th, 1975, when you received that, what is the reason that you did not -- Strike that. The bill-of lading which contained the entry 1,654, is the bill of lading that the truckman wanted you to sign; is that correct?

A Right.

Q The truckman indicated, I believe you testified this morning, that he couldn't sign a different number because he didn't have authority to compromise that issue?

A Right.

Q So, you signed a blank one in order to be able to negotiate that out later with whoever called for it?

A It's not a matter of negotiation, it's to keep everybody, the driver's safety, the safety of the driver.

MR. YOUTT: No further questions.

THE COURT: Mr. Corcoran?

MR. CORCORAN: May I see the documents for a moment, please?

JUROR NO. 11: Sure.

RECROSS EXAMINATION

BY MR. CORCORAN:

Q Prior to February 17, 1975, had you ever done business with David Travettes, Jewish Guild, Shape Craft, International Distribution Services, Port Jersey Blvd., Jersey City, New Jersey?

A I don't think so.

Q You had the address on here, didn't you?

A Address of who?

Q You've got -- Tell us who the addresses are for?

A Port Jersey Blvd., that would be for International Distribution Service.

Q That's the consignee of the product?

A As it's right here, it seems like it.

Q Do you have any other paper work relating to that particular shipment; do you have your internal documentation?

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M. Wercberger-recross

A I don't know if I have here.

Q Do you have your receipt, your invoice?

A I don't know if I have it here.

MR. CORCORAN: Could I call upon the defense to produce it, if he does have it here in Court.

MR. YOUTT: The internal documentation with respect to that particular item?

MR. CORCORAN: Any other documentation that pertains to that shipment.

MR. YOUTT: Okay. I want to talk to the witness about it, I want to know if he looked through his files and brought everything here.

THE COURT: Well, search the files and see if you have it and produce it on Monday, will you?

THE WITNESS: What do you want from this?

MR. CORCORAN: All of the paper work pertaining to this particular document, this shipment represented by Defendant's Exhibit L.

Q Is it your testimony, Mr. Wercberger, on redirect, that you don't know Stanley Diamond, you don't know Jimmy Santa and you don't know Mannie Gomez; is that correct?

A Yes.

Q Can you explain to us why Jimmy Santa and

Mannie Gomez put the Schick products --

THE COURT: Objection sustained, that's argumentative.

Q And you didn't call or direct anyone else to call Jimmy Santa immediately after the federal officers received this shipment from your warehouse?

A No.

Q And you don't know how they came to know that the federal officers had seized it ten minutes after it arrived?

A Who said that?

THE COURT: I'll sustain the objection to that, there's no proof in the record as to that.

MR. CORCORAN: Your Honor, the testimony of the witness, Mr. Pollari and Mr. Santa, told him when he arrived back in Robert's Lounge, he said ten minutes after the deliverer's left the CBS Warehouse, the goods had been seized by the Federal Bureau of Investigation.

THE COURT: I'm sorry, I'll sustain it on other grounds, it's argumentative.

MR. CORCORAN: Thank you, I have nothing further.

MR. YOUTT: No further questions.

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THE COURT: You may step down. We'll take a short recess and then we'll have the next witness.

(Short recess was held.)

THE COURT: Seat the jury please.

(Jury is seated.)

THE COURT: Mr. Youtt, a witness?

MR. YOUTT: Yes, Mr. Wolf Frieman.

WOLF FRIEMAN, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Would you please state your name and spell it for the record?

THE WITNESS: Wolf, W-O-L-F, Frieman, F-R-I-E-M-A-N.

DIRECT EXAMINATION

BY MR. YOUTT:

Q Mr. Frieman, are you acquainted with the defendants in the Courtroom here today, the three men over at the table here?

A Right.

Q Mr. Chiam Kahan, Mr. Mor Wercberger and Mr. Solomon Wercberger?

A Right.

Q Would you tell us, on March the 13th, March the 12th and March the 13th, 1975, did you do work for the CBS Warehouse?

A Right.

Q And what was it, what kind of work did you do?

A Well, I was a bookkeeper at CBS Warehouse, and I had inventory control and I manage inventory in the warehouse, and actual internal office work.

Q On March the 12th, 1975, were you there at the CBS Warehouse?

A Right.

Q And did you do so on March the 13th, were you there at the CBS Warehouse?

A Right.

Q Well now, when you were there, you were there, where were you located;did you have an office?

A Well, the CBS Warehouse consisted of three floors and in building 58 in Bush Terminal, which was the 4th, 5th and 6th. CBS had their office on the 4th floor.

I usually came up in the morning, I was in the office all day long, seldom going out until the end of the day, which was 5 o'clock.

Q And when you worked in the office, what generally did you do in connection with the work as an inventory control person?

A Well, whenever merchandise came into the warehouse and any documents that came into the office that's relating to the merchandise, I had a lot assigned to the merchandise, we have the lot plan in consecutive numbers, which I had, a lot book, when I posted whenever the lots as they came in.

Once the lot came in and I received information how the rates would be, either it was going on cubic foot basis or was going on standard carton rate, I had typed, I typed the receipt and acknowledgement of the receipt of goods and mailed it to -- With an invoice, for the handling of the first month of storage, and mailed it to the address to whom the merchandise belongs.

Q Did you prepare the document, internal documents for your records?

A Right.

Q Of where the shipments would be located and how many items they contained?

A Right. I -- Well, whenever that piece of, whenever the document came up from the dock, from the dock where the merchandise was received, now taking this document, bill of lading whatever it was and putting it on the warehouse, as far as into the amount of cartons is concerned and whatever else information it had, markings on the cartons, to identify the cartons was all posted on inventory cards and I mailed out invoices and, from then on if merchandise was ordered released, I had to deduct it from the inventory card and keep an exact control on what was on the card, and so on.

Q Were there times that you were given pieces of scratch paper that had quantities of cartons written on them from other CBS Warehouse employees?

A Yes.

Q And what did you use those pieces of paper for, the same purpose?

A Right. Any paper that came in with an X amount of cartons in it, whatever it was relating to a specific shipment, I used that to establish the lot. It didn't, I was never instructed, it was never -- Actually I was supposed to be any specific kind of paper, you know, as long as I got a piece of paper saying the X amount of cartons came into the warehouse.

That piece of paper that I originally received, it's put a lot number on the paper; from then on it went on the CBS stationery, whatever the necessary receipts and invoices.

Q Did you receive a more detailed breakdown as to what was in the shipment from the piece of paper that you received from CBS employees?

A Yes. Usually they had a description on the paper which I received, because I had to put down on the receipt in specific what kind of merchandise I received.

There were times that I -- That as far as numbers and sizes were not double checked, only amounts were double checked, so then that was the time I went out of the office and I took a physical check to see the breakdown of the sizes and so forth, and styles.

Q All right. Mr. Frieman, I'm handing you Exhibit 2C which is in evidence, and I ask you; If you recognize that?

A Yes, I do.

Q What is that, Mr. Frieman?

A That's a warehouse receipt being sent out to the customers for whom, which we received the merchandise, and then identifying all the merchandise that was received in that shipment and the amount of cartons.

Q And what was the name on that warehouse receipt?

A International Trading Company.

Q Does that have an address on it?

A No, it does not.

Q Were there occasions when you got the name of a consignee without the address?

A 99.9%.

Q What would you do on those occasions with the warehouse receipt?

A As far as -- Most of the time we knew with whom we were dealing and I knew the address by heart, and even though it came in without the address. But, if something came in and that I didn't know, it was just like there and waiting, you know, until I should get more information on the thing.

Q Mr. Frieman, handing you Government's Exhibit 2D in evidence: Would you tell me if you recognize that and if so, what it is?

A Yes. I do recognize it, and that's an inventory card. That's what I said before, when the merchandise come in together with a receipt that I filed, I copied this off a inventory card and I keep on deducting from that card every time merchandise were drawn from that lot. And, when it comes to zero, the lot was closed and went into a closed file; the lot was out already.

THE COURT: Mr. Youtt, I now recall that when Mr. Corcoran was examining, he took a document from I believe it was Juror No. 10; I don't think the other jurors had seen it and I think that's the last

Frieman-direct

document that's involved.

THE CLERK: Defendant's Exhibit O.

THE COURT: Exhibit O.

JUROR NO. 9: No, it's the short one.

THE COURT: It was the one that -- Please return that so that every juror can see what every other juror sees.

MR. YOUTT: Thank you, your Honor.

Q Mr. Frieman, did you prepare that inventory control card?

A Yes.

Q And that reflects the inventory control for the International Trading shipments received on March the 12th?

A Right.

Q What date did you prepare that, if you know, or if you can tell from the card?

A Well, March the 13th.

Q Do you remember whether you prepared that inventory card in the morning or the afternoon of March 13th?

A I recall it was about 1 o'clock.

Q Handing you now what's in evidence as Government's Exhibit B, I ask you: Ifyou can recognize Government's Exhibit B?

A Yes, I do.

Q Did you prepare that?

A Yes, I did.

Q And what was it?

A That seems, that was incomplete yet, but that could have been the invoice that was received to be sent to International Trading Company. And, the reason it's not filled out completely yet because I don't know the rate what was agreed upon, how we should handle the customer.

Q Do you remember what document or papers you used in order to get the breakdown of products, in order to prepare your inventory control paper?

A On this specific shipment?

Q Yes, on that particular shipment?

A That particular shipment, there was a lot of styles in it, and number of cartons and I went out of the office with Mor Wercberger and we did a physical on it to breakdown specific styles and specific amounts.

Q Handing you Government's Exhibit E, 2E which is in evidence; do you recognize that?

A Yes, I do.

Q What is that?

A That was the original breakdown I made and assigned a lot on this, since I had a total over here and from this paper, I filled out that warehouse sheet and invoice, and inventory control card.

Q So, you wrote the breakdown; is that right?

A Yes, right.

Q And you used the information, the information that you obtained from that paper in order to prepare your inventory?

A That's right, the lot.

Q Now, as a bookkeeper, did you also have anything to do in March of 1975 and at other times, did you also have anything to do with the money side of the business?

A Well, I handled all the money that was in the business.

Q Well, did you collect the shipping charges from shippers, from consignees -- Strike that. Did you collect the storage charges from consignees?

A Correct.

Q Did you receive money in cash in those transactions?

A No.

Q How did the consignee pay the bills?

A Usually in checks.

MR. YOUTT: Thank you, I have no further questions at this time.

THE COURT: Mr. Corcoran?

CROSS-EXAMINATION

BY MR. CORCORAN:

Q Mr. Frieman, you said you're familiar with most of the addresses, you know them by heart; is that correct?

A Yes.

Q I ask you to examine Defendant's Exhibit O; are you familiar with that transaction?

A Yes.

Q Are you familiar with those terms?

A Yes.

Q How often have you dealt with those firms?

A Pardon?

Q How often have you dealt with those firms?

A I recall about three or four times.

Q You knew the addresses when that came in?

A No, not when it came in.

Q How would you bill for a load that came in like this?

A Well, I wouldn't make the bill. I would ask the bosses what kind of arrangements was made on a shipment like that.

Q And the bosses would be able to tell you what kind of arrangements was made on a shipment like that?

A Yes, right.

Q Mr. Frieman, are you related to Eugene Frieman?

A No way.

Q You have no relative, Eugene Frieman?

A No.

Q Are you realted to anyone who has ever worked as S & F Warehouse?

MR. YOUTT: Objection.

THE COURT: Overruled; I'll allow it.

Q Are you related to anyone that ever worked at the S & F Warehouse?

A I do know who worked in S & F Warehouse.

Q Did you have any relative who ever worked in S & F Warehouse?

A No, not as far as I know.

MR. CORCORAN: Thank you, I have no further questions.

THE COURT: Anything further, Mr. Youtt?

MR. YOUTT: Yes, I have one question which I should have asked on direct examination, and I would like the opportunity to reopen it?

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. YOUTT:

Q Mr. Frieman, do you know whether at the time you worked as a bookkeeper for the CBS Warehouse, that it was buying or selling merchandise that was stored in its warehouse?

A No.

Q It was acting solely as a warehouse?

A Public warehouse.

MR. YOUTT: Thank you.

THE COURT: Anything further, Mr. Corcoran?

MR. CORCORAN: No questions.

THE COURT: You may step down. Next witness?

MR. YOUTT: Mr. Chiam Kahan.

CHIAM KAHAN, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. YOUTT:

THE CLERK: Please state your name and spell it for the record, please?

THE WITNESS: Chiam, C-H-A-I-M, Kahan, K-A-H-A-N.

THE CLERK: Be seated.

Q Mr. Kahan, directing your attention to the month of March, 1975, were you the president of the CBS

Kahan-direct

Warehouse, Incorporated?

A Yes.

Q And as such, were you actively engaged in the business of the CBS Warehouse at that time?

A I was actively engaged in brining in new business.

Q What was the nature of your work with the CBS Warehouse?

A Mainly sales.

Q Mainly sales?

A Right.

Q And what did you do in your sales capacity?

A Go out to customers, solicit to various journals, calling up trucking outfits to bring merchandise and recommend their clients to bring merchandise to our place. Advertising in various journals and includes the Yellow Pages, and other types of common carrier journals, and contacting direct clients, import-export mainly.

Q When did you go into business at the CBS Warehouse?

A I believe it was June of '73 we started up there.

Q How old are you now, Mr. Kahan?

A Twenty-six.

Q How old were you when you went into business at the CBS Warehouse?

A Goes back four years; I was 22.

Q Back in 1973, well prior to the time you went into business with the CBS Warehouse, what kind of work experience had you had?

A Had warehouse experience.

Q Where at you worked in warehouses?

A Able Warehouse.

Q Able Warehouse; where is that located?

A That's 41st and 1st Avenue.

Q Also in --

A Brooklyn.

Q Brooklyn. All right now, how long had you worked for the Able Warehouse, approximately?

A About a year, less than that.

Q About a year?

A Yes.

Q Prior to the time you worked for the Able Warehouse, did you have any other warehouse experience?

A No. I was just out of school, I just came out of school and went into work, when I worked in the warehouse. I was also just in and out, it wasn't full time. First full time was --

Q Would you please keep your voice up so everybody in the jury can hear you and answer the question again.

A I was in school before that. I just, I started, that's the first I went in.

Q And when you say you worked in the warehouse, had you, did you continue to go to school; is that what you're saying?

A Yes.

Q Now, did you work full time in the warehouse?

A Yes; last couple of months.

Q The last couple of months?

A Yes.

Q What type of work did you do for the Able Warehouse?

A I was manager of the warehouse. Started as clerk and went up to manager in a very short time.

Q And as manager, what did you do?

A Taking care of merchandise to go in and out of the facility, and control with the customer to satisfy the customer; talking to them on the phone.

Q In connection then, when you came to work at the CBS Warehouse, I take it that you went into business with Mr. Mor Wercberger, Solomon Wercberger; is that correct?

A Yes.

Q When you started to work in the CBS Warehouse, did you have any contact, or did you meet in any way Mr. Jimmy Santa?

A No. Never met him as of today, as far as I'm concerned.

Q Or Mr. Stanley Diamond?

A Never met him yet.

Q Or Mannie Gomez?

A Never met him.

Q Or Frank Joseph Maloney?

A Never met him. Never heard those names before the Courtroom here.

Q Okay. Now, directing your attention back to the month of March, 1975, and specifically March the 12th, 1975, you heard testimony here today, have you not, concerning the receipt of a shipment of Schick products by the CBS Warehouse; is that correct?

A Yes.

Q On March 12th, were you at the CBS Warehouse?

A I wouldn't recall if I was at the time. Yes, I was, CBS Warehouse.

Q Were you at the warehouse at the time the shipment of Schick products arrived?

A March 12th; I think I was at the warehouse, I don't recollect 100%, but I think.

Q But you were there at the time you saw these Schick products at the warehouse; is that correct?

A Yes.

Q Now, were they being unloaded at the time you saw them?

A I saw the truck. I was over, the conversation was with Mr. Fisher, I think I asked, Told the officer that a shipment is coming in, whatever, and the truck was still waiting. When I saw it the truck was outside the yard, the complete platform was full and it took some time before he backed in. I didn't see when he started unloading but in the process of unloading, I saw the unloading process.

Q Where were you located while the truck was being unloaded?

A I was usually on the phones, calling up clients. It was a big -- It's a bulletin that comes out every week, it's the important bulletin that I was going over every time, whatever ships bring in, import-export.

Q Your phone is located on the fourth floor?

A Right, in the office.

Q And did you come down to the platform area at any time during the unloading process?

A Yes. I have seen on one occasion the unloading process.

Q And when you say, "One occasion"?

A I mean, I came down in the process of and I saw the unloading. I did not participate in this unloading and in the count in any way.

Q You were aware it was being unloaded?

A Yes, I was aware.

Q And you came down to see it being unloaded; was the unloading completed, in other words, was the truck empty on March the 12th or was it still partially loaded?

A It was better than half, it was loaded I think.

Q When you say loaded, you mean it was unloaded?

A Unloaded, I meant loaded on the dock I meant.

Q And my next question is, where were the goods that were being unloaded located?

A On the platform, right after the door, between the truck; it was parked, it was about 50 or 60 feet which all of the merchandise comes off the truck will usually go so that car can be counted there.

Sometimes other traffic going in the warehouse, so they won't just take it, they would proceed because this, you know, you could do it after 5 o'clock but you wouldn't want any truck to wait.

So, it was just inside and in the process of counting the pallets. Policy of the company, because truckers say they have to go up and look, just to see that everything is there and to be recounted by both, specifically, it's a small car and large amounts on the pallets, so this is the only way that you can really do it.

Q Prior to your seeing those Schick products there at the warehouse, had you expected they would be arriving at -- Had anybody told, called you and told you they were sending them?

A No.

Q And at the time when you saw these Schick products on the platform, were there other trucks in the vicinity?

A Yes.

Q And what were they doing, to the best of your recollection?

A They were loading and unloading.

Q That was at the same platform area?

A Right.

(Continued on next page.)

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Q Were there other people around?

A It was a large platform and the platform fits about 12 trucks, at the time 12 tractor trailers. So, we have 12 spaces so I can say it better put the platform, it was more than half full, that means over five, six trucks loading or unloading.

Q You had testimony this morning from Mr. Moishe Wercberger about an entrance and an overhead door in the back of the CBS Warehouse?

A Yes, I know exactly what he was talking.

Q Is that an entrance which is frequently used for loading and unloading purposes?

A It was used occasionally by the CBS Warehouses for unloading pallets which will be of size, you know, you can go in the side of it, go all around the truck there.

Q And in that area, a truck would have to then drive behind the CBS Warehouse and into that overhead door?

A Right.

Q How large of a truck would that entrance accommodate?

A You can fit two, three tractor trailers, two for sure.

Q Isthe height of the door a factor there where it would have to a low bed trailer?

A When we moved in, the neighbor requested that height to be opened, so it's a big platform opening; it was made specially by Bush Terminal Associates to accommodate the highest tractor trailers.

Q Is there an elevator in the back area there?

A The building has three elevators, two in the front, one is consigned to CBS WArehouse and the other, the other tenant. The one in the back is shared, that's on the lease, for CBS, shares with who and, the elevator can break down so you can't put anybody out of business, so the back elevator is shared with both companies.

Q The back elevator had access to your floor?

A It had access to the floor and it had access to the platform, and access to that place.

Q At the time that the shipment of Schick Products arrived on March 12, 1975, didyou have any knowledge that those products were stolen, if they were?

A No, I have no knowledge.

Q At the time, or at about that time, had you made any arrangements to purchase those particular Schick Blades?

A I never purchased any merchandise and never sold any merchandise.

Q Had anyone offered to sell you the Schick Blades that arrived on March 12, 1975?

A No.

Q At any time?

A No.

Q Now, with respect to the CBS Warehouse premises, on March the 13th when another shipment of Schick Products arrived, according to the testimony he --

A Yes, I was there.

Q Were you aware, or did you expect that that shipment would be arriving before it did?

A No, I did not.

Q When it arrived, what did you do?

A I didn't physically do anything to that shipment when it arrived, but when it arrived pallets was putting down and it was the normal practice of unloading.

Q Did you go with your -- strike that. Did you see the truck arrive, as I understand it the truck arrived and later two vans; is that correct?

A I don't know if I saw the truck arriving, I saw the truck and two vans.

Q So, by the time you first noticed the unloading of the truck, the truck was being unloaded; is that correct?

A If I remember, well, the way it happened --

Q Did you see the two vans parked in some other area?

A Yes. I've seen the two vans parked in the side and was like a circle, and it was a car parking lot; they were parked like in the circle.

Q Did you go with Mr. Wercberger, Mr. Moishe Wercberger, to look at the contents of the two vans before they moved up?

A No, I did not. THat wasn't my part.

Q When did you see the unloading process with respect to the Schick Products on March 13, 1975?

A I have seen unloading products.

Q Did you personally supervise that process in any way?

A No, I did not supervise; I helped occasionally when it gets busier with other traffic, at the time at the warehouse. I don't remember what kind of traffic, you know, and occasionally I come down and help just to move thethings out of the way, so it shouldn't be bad for us.

Q Did you know that the Schick Products that arrived on March the 13th were stolen or alleged to be stolen?

A No.

Q Did anyone offer to sell you these Schick

Products on March the 13th?

A No.

Q Did anyone offer to sell you Schick Products when you arrived on March the 13th?

A No.

Q At any time?

A No.

Q And I take it then, you were not the purchaser or seller of those products?

A No.

Q Now, directing your attention back a couple of months to February 4, 1975. You heard testimony in this Court about a shipment of certain Whitehall Products, including Anacin that was --

A Yes.

Q -- that was received by the Warehouse?

A Yes.

Q Were you aware of the arrival of that particular quantity of goods at or about the time that it came in?

A No, I was not aware of it; it was thoroughly handled by Mr. Fisher.

Q Do you know on what date those goods came in?

A I have the slightest.

Q You have no idea as to when they came in?

A No, I have no idea when they came in.

Q Have you made any kind of evaluation to determine when they came in; study any records?

A No, I did not.

Q Now, with respect to those goods, I take it then since you didn't know they were coming in, you didn't expect any goods from the Whitehall Company or any pharmaceutical company such as them about February 4, 1975?

A We had, we specialized in our business, it was about 50 per cent import-export, and the other 50 was in cosmetics, that means any type of cosmetics, any type of drug shelf items, so it could come on any given time, any shipment.

We hoped most of the time that it, we would be noticed before, but if we can make arrangements for a certain date, because one day is busy and one day is slow, but most of the time we were not informed in advance, so you know, we didn't have to --

Q How did you go about a special pharmaceutical product; in other words, did you just go to a pharmaceutical wholesaler or shipper, in order to advertise your warehouse, or what did you do?

A These are the items who most frequently use warehouses, they're import-export and pharmaceuticals, and I did personally vist to these people and got the business. I did much more business, but this is a couple that I got the business from.

Q What type of people do you mean when you say you personally solicited; you went to the wholesaler or retailer or what?

A My first contact would always be on the phone, a certain type of articles any information I can get, there is the New York Times, Sunday Times, it says somebody has merchandise, you know, sell, bigger companies. I'll go and just call anybody, I mean but -- this is, I call a lot of pharmaceutical companies and this is the three or four that I got.

Q Would you call, would you call actual pharmaceutical producers?

A I did call on occasion on these people, but I never got business from the big companies. You call usually the wholesalers.

Q So you would call wholesalers of pharmaceutical goods. Now, a wholesaler of pharmaceutical goods, is he located usually in New York, if he does business in the New York area?

A Most of our accounts are in fact, all of them, were local in New York. So, though we solicited nationwide, through phone calls and various types of services that is around four warehouses, but we weren't successful.

Q Now, a wholesaler who purchases pharmaceutical products, purchases them in order to distribute them to retail stores; is that correct?

A Right.

Q Now, when he purchases goods, first of all, are there wholesalers who have their own warehouse facilities in the New York area?

A Most of these wholesalers, even the ones I dealt, had their own places too but they bring in large quantity, they buy stock trailer load, whatever, and that is a lot of the type of product that you know, every corporation makes, ten, fifteen products, whatever. So, they bring them in all the warehouses, they take a pallet of these and a pallet of these, and they will distribute the one pieces to the retailer direct. We weren't involved in the direct distribution to stores, they did on their own. They came in with their own trucks, picked up and took it to their own places.

Q When the wholesaler purchased goods, he usually purchased it actually from the manufacturer or the distributor?

A That varies. He can buy from another wholesaler or he can buy from direct manufacturer. I never looked at, I know it wasn't our source of business.

Q When a wholesaler decided to purchase goods based upon your knowledge of the trade, when the wholesaler decided to purchase some goods, and he wanted to store it in your warehouse, he would notify the company then to ship to the CBS Warehouse?

A Yes.

MR. CORCORAN: I'll object, your Honor.

THE WITNESS: Because --

MR. CORCORAN: As to what the wholesaler would do.

THE WITNESS: Yes, because --

THE COURT: I'll allow it, as a general business practice of CBS.

MR. YOUTT: Thank you, your Honor.

THE WITNESS: They did, they did not -- I forget the question.

Q Based upon the general business practice of CBS, that is what you know based upon your experience at CBS, when a wholesaler decided to use the CBS Warehouse to store goods, he would order the goods from the manufacturer and tell the manufacturer to ship them to the CBS Warehouse; is that correct?

A Yes, that is routine practice because this is only a certain amount that we can ship it.

Q And when you heard Mr. Wercberger testify that sometimes, on numerous occasions you would receive goods that didn't either, didn't list the consignee or listed the consignee without an address, was that correct?

A Correct.

Q So on those occasions, as you knew who the consignee was, and could therefore find his address and other information, couldn't you; is that correct?

A Correct.

Q Now, in your experience, would you tell me did that happen on occasions that you would get goods in from someone with the name of a consignee that you didn't recognize?

A Yes.

Q What would you do with the goods after you got them in on those circumstances?

A We would check them out, exactly the contents and what he has, so to put them in inventory cards, and we put them in with the files inside, the top file. It was a three level drawer, the top file was outstanding bills of lading and one of the drawers was for outstanding mail, and the bottom was for those shipments. Almost all of the time

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the papers or something like that.

Q Mr. Kahan, you heard some testimony about money, and money wrappers. I'll ask you this; have you ever dealt with quantities of money in money wrappers?

A Never did.

Q You've also heard testimony that on the money wrappers was a mark, a Star of David. Are you familiar with the Star of David?

A Yes. That's the symbol of holiness of the Star of David, and I think I'll -- whoever uses it, that's not the place where it should be.

Q What branch or sect of the Jewish religion do you belong to?

A Satchma. That's the most extreme of the religion.

Q And in the Satchma sect of the Jewish religion, do you use the Star of David as a religious symbol?

A No, we do not use it as a religious symbol.

Q Would you tell the Court and jury why you do not.

A Because it's been used on all places by the Israeli Government and we oppose that, because it's a holy symbol, and you can't, this is not to be used on all these places that it's been used.

Q So is that a symbol you just do not use or associate yourself with?

A Right, and in all our synogagues, and our places, we do not bring the Star of David noplace.

Q Now, you've also heard testimony with respect to certain meetings which occurred on Saturday. Let me ask you this, Mr. Kahan; was the CBS Warehouse opened on Saturdays?

A CBS Warehouse closed Friday, 1:30 the latest. The business was closed at 12:00 and all of the companies, carriers, any large carrier named who knew that CBS business corporation shipping to us will know that CBS is closed from 12:00 o'clock Friday.

Q And when does the CBS Warehouse reopen after closing on 12:00 o'clock Friday, now I'm directing your attention back to 1975?

A Monday morning.

Q Now, is there a reason why you close at 12:00 o'clock on Friday?

A Yes, because we're Sabbath observers and it's the holiest thing in the whole thing, if we're not Sabbath, we observe it, and we can't even ride a car or do anything, and not take a pencil or buy anything or whatever.

THE COURT: At what time does the Sabbath end

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on Saturday in March?

THE WITNESS: Saturday night in March, close to 6:00, 7:00 o'clock; I can't remember exactly when it was at that time.

Q So, between Friday afternoon and Saturday at 6:00 o'clock or 7:00 o'clock, or shortly thereafter, you don't do business; is that correct?

A No, I don't do business.

Q And you don't ride in automobiles?

A That's not, even an automobile, I wouldn't touch a light of the switch, I wouldn't open and close.

Q How about a telephone; would you answer a telephone?

A No, I wouldnot answer the telephone.

Q Is that true, as far as you know, of Mr. Wercberger and Mr. Solomon Wercberger and Moise Wercberger?

A No, they would not do it.

Q Are they both members of the Satchma sect also?

A Yes, we had an alarm system of our warehouse, ATD, even if we had any instructions in the alarm, which can happen say in the winter, the company has the keys of the business to go in because they couldn't call us for any interruption of Saturday.

Q And what do you do on the Sabbath?

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A We go out in the morning from our house and we go to schuel and that takes, it's about till 12:00 o'clock.

Q Schuel is your religious services?

A Right, for religious services.

Q And after 12:00 o'clock, then what?

A We seat at the meal. It takes about an hour and it's, of course, in the usual Saturday everybody is at home, it's a family thing. You know, you don't conduct, you're not allowed even to talk business on Saturdays, that's why we don't even discuss business on Saturday, we don't talk about business on Saturday.

Q And when did you -- did you go back to the religious services at any time on Saturday afternoon?

A Yes, about 4:00 o'clock, 3:30, we go back to schuel for what's called Minkah Services.

Q Incidentally, Mr. Kahan, I didn't ask you this before; prior to your going back to work inthe warehouse, did you have any other employment experience?

A No, that's the only experience I had.

Q And when you were in school, what school did you attend?

A The United Talmudical School. I only learn in that school, from I came to this country, till now.

Q When did you come to this country?

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A Probably three months old. I came from Austria, originally.

Q And you have attended the United Talmudical Academy up through and until you went to work for the Warehouse?

A Right.

Q And did you continue going there on a part time basis after you worked at the Warehouse?

A I continuously, now go at night, the Yeshiva, they call it learning Talmud at night with another guy. I learn, you know, with another student, we learn together.

Q What kind of course of studies did you take at the United Talmudical Academy?

A The Bible, and I mean, you know, every week there is a certain part of the Bible that comes after that week, that the calendar year goes like much two weeks in the year, with this is what we study and we study Talmud.

Q Did you also study, did you study courses sufficient to give you a high school graduate degree?

A No, I never went. We started this, started when our people from Europe when we start school now, this isn't a good school facility but when I was there, it was just getting together. It's the largest in the Hassidic community, has a couple of thousand students but I never had a high school education.

Q Did you take any bookkeeping courses anywhere?

A Did not.

Q Have you ever taken any courses in warehouse management or operations?

A Not take any courses whatsoever.

Q Are you married, Mr. Kahan?

A Yes.

Q And do you have any children?

A Yes.

Q How long have you been married?

A One -- howlong have I been married; four years, four and a half years.

Q How many children do you have?

A One.

MR. YOUTT: I have no further questions at this time, your Honor.

THE COURT: Mr. Corcoran?

CROSS-EXAMINATION

BY MR. CORCORAN:

Q Mr. Kahan, you're president of CBS Corporation, are you not?

A Yes, I am.

Q And on March 13, 1975, you were out on the loading platform as the Schick Shaving Products here in question were unloaded into premises, were you not?

A Right.

Q And did you go over to the vans as they arrived and look into the vans with Mor Wercberger and Solomon Wercberger?

A Did not go to look into the vans.

Q You didn't go look at the vans?

A No.

Q And, you're aware that those products were unloaded into your warehouse?

A I was aware, yes.

Q And the day before, also?

A Yes.

Q I believe that you said thatprior to being present at the CBS Warehouse, you worked at the Able Warehouse?

A Right.

Q And you were a manager; is that correct?

A Right.

Q And I think you said you had supervision of the merchandise that would come in and go out; is that correct?

A Right.

Q You're a business man?

A I assume, yes.

Q You deal with wholesalers?

A Yes.

Q With corporations?

A Yes, I do.

Q In the passage of merchandise through customers?

A Right.

Q I ask you to look at Government Exhibit 2 and 2-A, Mr. Kahan; as a business man, sir --

A Go ahead.

Q -- have you seen those documents before?

A Have I seen these documents before?

Q Yes, sir.

A No, I did not.

Q You have never seen them?

A No, I did not.

Q Did you have a conversation with Patrick Colgan on March 13, 1975 at about 4:30, 5:00 o'clock?

A I had a conversation with him at the time. The time I don't recall.

Q At that time, did you tell Patrick Colgan or agents of the FBI, the number of Schick cartons that had come in on March 12th, and the number of Schick cartons that had come into the CBS Warehouse on March 13?

A I heard so testified, but did not.

Q You did not tell those agents at the time?

A No. He asked me numbers which I -- it's been a long time. He asked me numbers, he threw to me numbers but did not --

Q Did you not answer to any number?

A No.

Q You then were not aware of how many cartons came in at the time, sir?

A No. It wasn't my normal practice of business, knowing numbers and amounts of cartons.

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Q Did you tell Agent Colgan that you had nothing to do with the Schick Products that came in?

A Right.

Q But you told him no numbers?

A Right.

Q Sir, as a business man and as manager of Able Warehouse and as president of CBS Warehouse, can you tell us how your business accepted 1,606 cartons of Schicks Products on March 12, 1975, based upon that documentation?

A These documentations, business -- I was before Able Warehouse, and another company, any warehouse, any man can come up with any papers and bring in merchandise to the warehouse.

We're like a parking lot, when you take your car into a parking lot nobody will ask you to identify the car. When you come in, you got to bring your ticket, when you take it out; this is the process of a warehouse operation.

Q Well, then, sir, based upon those particulars on your own analogy, how much Schick Products would the man who parked those products in your warehouse be able to take out, based upon that documentation?

A The man -- it says on the documentation --

Q 1,654 cartons, sir?

A The amount he has signed for.

Q And how much is it, according to the documentatio

A It says "one load."

Q And the other document, sir?

A One load, here I can't see the number on it, I can't read the number on it.

Q Are you able to read, sir?

A I have a very poor -- I can't see the number.

Q If I were to tell you that the only figure on these documents which pertain to carton numbers is 1,654, could you tell me how many cartons the representative of International Trading would be entitled to when he came back to your warehouse to get this?

THE COURT: Objection sustained. The witness has indicated he has had nothing to do about the documents and all he is doing is reading the documents.

MR. CORCORAN: Your Honor, he is the president of the corporation, and he's --

THE COURT: Strike that out. You still have to prove thathe has personal knowledge of these things. The fact that he is president doesn't give him any derivative liability.

Q Is it your testimony, sir, that you had no personal knowledge of the number of cartons thatyou accepted on March 12th and March 13th; is that correct?

Service of three ③ copies of the within is admitted this 1st day of June 1977

United States Attorney for the Eastern District

REC'D U.S. ATTORNEY
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